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State of California, Superior Court  
County of Santa Clara, California

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Employees Association, Howard E. Fleming,  
Donald S. Macrae, Frances J. Olson, Gary J. Richert  
And Rosalinda Navarro

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

SAN JOSE RETIRED EMPLOYEES  
ASSOCIATION, HOWARD E. FLEMING,  
DONALD S. MACRAE, FRANCES J.  
OLSON, GARY J. RICHERT and  
ROSALINDA NAVARRO,

Plaintiffs/Petitioners,

vs.

CITY OF SAN JOSE; DOES 1 through 50,  
inclusive,

Defendants/Respondent.

BOARD OF ADMINISTRATION FOR  
THE FEDERATED CITY EMPLOYEES  
RETIREMENT SYSTEM,

Real Party in Interest.

Case No. 112 CV 233660  
) COMPLAINT FOR INJUNCTION AND  
) DECLARATORY RELIEF AND  
) VERIFIED PETITION FOR WRIT OF  
) MANDATE [CCP 1085]

[Unlimited Jurisdiction]

BY FAX

COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF,  
VERIFIED PETITION FOR WRIT OF MANDATE



1 well as qualifying spouses, domestic partners and other eligible beneficiaries of Affected  
2 Retirees and eligible beneficiaries of deceased employees (hereinafter collectively referred to as  
3 "Affected Beneficiaries").

4 4. At all times herein mentioned Plaintiffs/Petitioners Howard E. Fleming  
5 and Donald S. Macrae were, and now are, Affected Retirees who retired prior to on or about  
6 September 18, 1984. Mr. Fleming and Mr. Macrae bring this action in a representative  
7 capacity to enforce vested rights accrued to all Affected Retirees who retired prior to on or  
8 about September 18, 1984, Affected Beneficiaries of any such Affected Retirees, and those  
9 persons who became Affected Beneficiaries prior to said date.

10 5. At all times herein mentioned Plaintiff/Petitioner Frances J. Olson was,  
11 and now is, an Affected Retiree who retired between on or about September 18, 1984 and on or  
12 about June 3, 1986. Ms. Olson brings this action in a representative capacity to enforce vested  
13 rights accrued to all Affected Retirees who retired between on or about September 18, 1984 and  
14 on or about June 3, 1986, Affected Beneficiaries of any such Affected Retirees, and those  
15 persons who became Affected Beneficiaries prior to said date.

16 6. At all times herein mentioned Plaintiff/Petitioner Gary J. Richert was,  
17 and now is, an Affected Retiree who retired between on or about June 3, 1986 and on or about  
18 April 1, 2006. Mr. Richert brings this action in a representative capacity to enforce vested  
19 rights accrued to all Affected Retirees who retired between on or about June 3, 1986 and on or  
20 about April 1, 2006. Affected Beneficiaries of any such Affected Retirees and those persons  
21 who became Affected Beneficiaries prior to said date.

22 7. At all times herein mentioned Plaintiff/Petitioner Rosalinda Navarro  
23 was, and now is, an Affected Retiree who retired after on or about April 1, 2006. Ms. Navarro  
24 brings this action in a representative capacity to enforce vested rights accrued to all Affected  
25 Retirees who retired after on or about April 1, 2006, and Affected Beneficiaries of any such  
26 Affected Retirees.

27 8. At all times relevant herein, Defendants/Respondents designated Does 1  
28 - 50 were the agents, servants, and employees of the City and in doing the things hereinafter

1 alleged were acting within the scope of their authority with the permission and consent of the  
2 City. Plaintiffs will amend this Complaint to allege the true names and capacities of Does 1 -  
3 50, inclusive, when ascertained.

4 **B. RETIREMENT BENEFITS REQUIRED BY THE CITY CHARTER**

5 9. Article XV, Section 1500 of the City Charter requires the City Council to  
6 establish and maintain a retirement plan for all officers and employees of the City. A true and  
7 correct copy of Article XV, Section 1500 of the City Charter is attached hereto as Exhibit A  
8 and incorporated herein by reference as though set forth in full.

9 10. While City Charter Section 1500 gives the City Council the ability to "at  
10 any time, or from time to time, amend or otherwise change any retirement plan or plans or  
11 adopt or establish a new or different plan or plans for all or any officers or employees"  
12 (emphasis added), such ability is limited to officers or employees and thus excludes retired  
13 persons and their beneficiaries such as Affected Retirees and Affected Beneficiaries.  
14 Therefore, any new or different plans for the Affected Retirees or the Affected Beneficiaries  
15 that provide reduced or less advantageous benefits than those which were established during  
16 the Affected Retirees' employment may not be adopted or established.

17 **C. RETIREMENT BENEFITS OF AFFECTED RETIREES AND AFFECTED**  
18 **BENEFICIARIES DESCRIBED IN THE SAN JOSE MUNICIPAL CODE**

19 11. Pursuant to its authority under the California Constitution and the  
20 requirements of Article XV, Section 1500 of the City Charter, the City Council established the  
21 Plan as a defined benefit plan. The provisions of the Plan are set out in Chapters 3.16, 3.20,  
22 3.24 and 3.28 of the San Jose Municipal Code ("SJMC"). A true and correct copy of the Plan  
23 is attached as Exhibit B and incorporated herein by reference as though set forth in full.  
24 Membership in the Plan is mandatory for persons employed by the City in the positions held by  
25 Affected Retirees and was mandatory for all Affected Retirees during their employment with  
26 the City. The Plan pays a monthly retirement allowance to the Affected Retirees and pays a  
27 monthly survivorship allowance to the Affected Beneficiaries.

28 12. Benefits payable under the Plan are funded by contributions from the



1 active Plan members and the City. Contribution rates are determined by the Board and are  
2 adjusted from time to time based upon valuations performed by the Board's actuaries. During  
3 their employment with the City, Affected Retirees made contributions for retirement benefits as  
4 required by the Plan and as set by the Board.

5 13. Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16,  
6 which became effective on or about September 18, 1984, Affected Retirees who were  
7 employed on or after that date, their Affected Beneficiaries, and those persons who became  
8 Affected Beneficiaries on or after that date who met the requirements set forth therein became  
9 eligible to participate in a medical insurance plan sponsored by the City (the "City's Retiree  
10 Medical Plan") with respect to which the Plan pays all or a prescribed portion of the premium  
11 upon and following their retirement or, in the case of a survivor, following the death of the  
12 member. Those Affected Retirees who were employed on or after the enactment of the City's  
13 Retiree Medical Plan, their Affected Beneficiaries and those persons who became Affected  
14 Beneficiaries on or after such enactment who met the minimum requirements set forth in the  
15 Plan earned a vested contractual right to participate in the City's Retiree Medical Plan  
16 following the Affected Retirees' retirement or, in the case of a survivor, following the death of  
17 the member.

18 In addition, the City promised those Affected Retirees who retired prior  
19 to the enactment of the City's Retiree Medical Plan, and those persons who became Affected  
20 Beneficiaries prior to such enactment, that they and their Affected Beneficiaries would be  
21 entitled to participate in the City's Retiree Medical Plan and to have the Plan pay the same  
22 premiums or prescribed portions thereof paid by the Plan for Affected Retirees who were  
23 employed, and those persons who became Affected Beneficiaries, on or after the enactment of  
24 the City's Retiree Medical Plan. The City is therefore estopped from treating the Affected  
25 Retirees who retired prior to the enactment of the City's Retiree Medical Plan, their Affected  
26 Beneficiaries, and those persons who became Affected Beneficiaries prior to such enactment  
27 differently from the Affected Retirees who were employed on or after the enactment of the  
28 City's Retiree Medical Plan and those persons who became Affected Beneficiaries subsequent

1 to such enactment because (a) the City was apprised of the above facts when making its  
2 promises; (b) the City intended that its promises be acted upon; (c) these Affected Retirees and  
3 Affected Beneficiaries were ignorant of the fact that the City might later assert that they had no  
4 right to participate in the City's Retiree Medical Plan and have the entitled premium payments  
5 made by the Plan; and (d) these Affected Retirees and Affected Beneficiaries relied on the  
6 City's promises to their detriment by foregoing other opportunities to procure medical  
7 insurance coverage for themselves and dependents at a lower cost than might be the case if they  
8 were not allowed to participate in the City's Retiree Medical Plan or were no longer entitled to  
9 have the Plan make the same level of premium contributions as the Plan makes for Affected  
10 Retirees employed on or after the enactment of the City's Retiree Medical Plan and those who  
11 became Affected Beneficiaries subsequent to such enactment.

12           14. Pursuant to SJMC Chapter 3.24, Part 24 and SJMC Chapter 3.28, Part  
13 17, which became effective on or about June 3, 1986, Affected Retirees who were employed on  
14 or after that date, their Affected Beneficiaries and those persons who became Affected  
15 Beneficiaries on or after that date who met the requirements set forth therein became eligible to  
16 participate in a dental insurance plan sponsored by the City (the "City's Retiree Dental Plan")  
17 with respect to which the Plan pays all of the premium upon and following their retirement or,  
18 in the case of a survivor, following the death of the member. Those Affected Retirees who  
19 were employed on or after the enactment of the City's Retiree Dental Plan, their Affected  
20 Beneficiaries and those persons who became Affected Beneficiaries on or after such enactment  
21 who met the minimum requirements set forth in the Plan earned a vested contractual right to  
22 participate in the City's Retiree Dental Plan following the Affected Retirees' retirement or, in  
23 the case of a survivor, following the death of the member.

24           In addition, the City promised those Affected Retirees who retired prior  
25 to the enactment of the City's Retiree Dental Plan and those persons who became Affected  
26 Beneficiaries prior to such enactment that they and their Affected Beneficiaries would be  
27 entitled to participate in the City's Retiree Dental Plan and to have the Plan pay the same  
28 premiums paid by the Plan for Affected Retirees who were employed, and those persons who

1 became Affected Beneficiaries, on or after the enactment of the City's Retiree Dental Plan and  
2 their Affected Beneficiaries. The City is therefore estopped from treating the Affected Retirees  
3 who retired prior to the enactment of the City's Retiree Dental Plan, their Affected  
4 Beneficiaries and those persons who became Affected Beneficiaries prior to such enactment  
5 differently from the Affected Retirees who were employed on or after the enactment of the  
6 City's Retiree Dental Plan and those persons who became Affected Beneficiaries subsequent to  
7 such enactment because (a) the City was apprised of the above facts when making its promises;  
8 (b) the City intended that its promises be acted upon; (c) these Affected Retirees and Affected  
9 Beneficiaries were ignorant of the fact that the City might later assert that they had no right to  
10 participate in the City's Retiree Dental Plan and have the entitled premium payments made by  
11 the Plan; and (d) these Affected Retirees and Affected Beneficiaries relied on the City's  
12 promises to their detriment by foregoing other opportunities to procure dental insurance  
13 coverage for themselves and dependents at a lower cost than might be the case if they were not  
14 allowed to participate in the City's Retiree Dental Plan or were not entitled to have the Plan  
15 make the same level of premium contributions as the Plan makes for Affected Retirees  
16 employed on or after the enactment of the City's Retiree Dental Plan and those who became  
17 Affected Beneficiaries subsequent to such enactment.

18           15. Medical and dental benefits payable under the Plan are funded by prior  
19 contributions from Affected Retirees, contributions from the active Plan members, and  
20 contributions from the City at rates determined by the Board. During their employment with  
21 the City on or after the enactment of the City's Retiree Medical Plan, as described above in  
22 Paragraph 13, Affected Retirees made contributions for medical benefits as required by the  
23 Plan and as set by the Board. During their employment with the City on or after the enactment  
24 of the City's Retiree Dental Plan, as described above in Paragraph 14, Affected Retirees made  
25 contributions for dental benefits as required by the Plan and as set by the Board. Similarly, the  
26 members of the Plan whose survivors became Affected Beneficiaries on or after such  
27 enactments also made contributions for medical and dental benefits as required by the Plan and  
28 as set by the Board.

1                   16.     Effective on or about April 1, 1970, the City Council adopted SJMC  
2 Chapter 3.44 to provide cost-of-living adjustments ("COLAs") for retirement allowances and  
3 survivorship allowances based upon percentage changes in the applicable Consumer Price  
4 Index. Effective on or about April 1, 2006, SJMC Chapter 3.44 was amended by the enactment  
5 of Section 3.44.160 to provide for a guaranteed flat annual COLA increase of 3% for members  
6 of the Plan and survivors of members. The Affected Retirees and the Affected Beneficiaries  
7 met the eligibility requirements set forth in Chapter 3.44 and therefore the Affected Retirees  
8 and the Affected Beneficiaries earned a vested contractual right to the COLAs described in  
9 Chapter 3.44. A true and correct copy of Chapter 3.44 is attached hereto as Exhibit C and  
10 incorporated herein by reference as though set forth in full.

11                   17.     On or about June 3, 1986, SJMC Sections 3.28.200, et seq. and  
12 particularly Section 3.28.340, were enacted to establish the Supplemental Retiree Benefit  
13 Reserve ("SRBR") within the San Jose Federated Employees City Retirement Fund (the  
14 "Fund") to provide for supplemental distributions to eligible members and survivors. Those  
15 Affected Retirees who were employed and those persons who became Affected Beneficiaries  
16 on or after these enactments met the eligibility requirements set forth in SJMC Section  
17 3.28.200, et seq. and therefore those Affected Retirees and Affected Beneficiaries earned a  
18 vested contractual right to all benefits provided by the Fund including but not limited to  
19 distributions from the SRBR.

20                   In addition, the City promised those Affected Retirees who retired and  
21 those persons who became Affected Beneficiaries prior to the enactments described above  
22 creating the SRBR that they and their Affected Beneficiaries would be entitled to the benefits  
23 of the Fund and the SRBR. The City is therefore estopped from treating the Affected Retirees  
24 who retired prior to the enactments described above, their Affected Beneficiaries and those  
25 persons who became Affected Beneficiaries prior to such enactments differently from the  
26 Affected Retirees who were employed on or after such enactments and those persons who  
27 became Affected Beneficiaries subsequent to such enactments because (a) the City was  
28 apprised of the above facts when making its promises; (b) the City intended that its promises be

1 acted upon; (c) these Affected Retirees and Affected Beneficiaries were ignorant of the fact that  
2 the City might later assert that they had no right to receive the benefits of the Fund and the  
3 SRBR; and (d) these Affected Retirees and Affected Beneficiaries relied on the City's  
4 promises to their detriment by foregoing other opportunities to procure supplemental retirement  
5 income for themselves and dependents at a lower cost than might be the case if they were not  
6 allowed to receive the benefits of the SRBR.

7 18. Since at least 1970, and continuing thereafter, the City, through  
8 numerous discretionary actions of the City Council, has expressly and impliedly assured  
9 Affected Retirees and Affected Beneficiaries that to the extent the COLA set out in SJMC  
10 Chapter 3.44 was inadequate to allow the payments to Affected Retirees and Affected  
11 Beneficiaries to keep up with the changes in the applicable consumer price index during high  
12 inflationary periods, the City Council would have the discretion to grant additional pension  
13 increases. The Affected Retirees and Affected Beneficiaries met the eligibility requirements  
14 set forth in Chapter 3.44 and detrimentally relied upon the City's assurances. The Affected  
15 Retirees and the Affected Beneficiaries earned a vested contractual right to have the City  
16 Council maintain its discretion to grant additional pension increases and/or are entitled to have  
17 the City Council maintain said discretion through the doctrine of detrimental reliance.

18 19. The benefits as described above in paragraphs 11 through 18 became  
19 vested when the Affected Retirees commenced performing services as employees of the City or  
20 when the Affected Retirees first performed services for the City after a benefit or improved  
21 benefit was enacted during their employment and, with respect to those Affected Retirees who  
22 had already retired and those Affected Beneficiaries who had already become survivors before  
23 the benefit or improved benefit was created, when those Affected Retirees and Affected  
24 Beneficiaries relied to their detriment upon the City's promise to make those benefits available  
25 to them. Further, the Affected Retirees continued to rely on the existence of those vested rights  
26 in continuing their employment with the City.

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1 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

2 **Count I [Violation of the Contract Clause of the California Constitution**  
3 **(Article I, Section 9)]**

4 20. The allegations contained above in paragraphs 1 through 19 are  
5 incorporated herein by reference as though set forth in full.

6 21. On June 5, 2012, the citizens of the City passed Measure B which  
7 abrogates and/or substantially impairs the vested contractual rights of the Affected Retirees and  
8 Affected Beneficiaries described above in paragraphs 11 through 18. A true and correct copy  
9 of Measure B is attached hereto as Exhibit D and incorporated herein by reference as though set  
10 forth in full. Measure B became effective immediately upon its passage and includes a goal  
11 that any implementing ordinances "shall become effective no later than September 30, 2012."

12 22. Section 1510-A of Measure B, entitled "Emergency Measures to Contain  
13 Retiree Cost of Living Adjustments," states:

14 "If the City Council adopts a resolution declaring a fiscal and  
15 service level emergency, with a finding that it is necessary to suspend  
16 increases in cost of living payments to retirees the City may adopt the  
17 following emergency measures, applicable to retirees (current and future  
18 retirees employed as of the effective date of this Act):

19 (a) Cost of living adjustments ("COLAs") shall be  
20 temporarily suspended for all retirees in whole or in part for up to five  
21 years. The City Council shall restore COLAs prospectively (in whole or  
22 in part), if it determines that the fiscal emergency has eased sufficiently  
23 to permit the City to provide essential services protecting the health and  
24 well-being of City residents while paying the cost of such COLAs.

25 (b) In the event the City Council restores all or part of the  
26 COLA, it shall not exceed 3% for Current Retirees and Current  
27 Employees who did not opt into the VEP and 1.5% for Current  
28 Employees who opted into the VEP [the One Time Voluntary Election  
Program set forth in Section 1507-A of Measure B] and 1.5% for  
employees in Tier 2."

23. By allowing for the suspension of applicable entitled COLAs, Section  
1510-A of Measure B abrogates and/or substantially impairs the unconditional vested  
contractual rights of the Affected Retirees who were employed on or after the enactment of

1 SJMC Chapter 3.44, those persons who became Affected Beneficiaries subsequent to such  
2 enactment and their Affected Beneficiaries to receive annual COLAs as set forth above in  
3 paragraph 16.

4 24. Section 1511-A of Measure B, entitled "Supplemental Payments to  
5 Retirees" states:

6 "The Supplemental Retiree Benefit Reserve ("SRBR") shall be  
7 discontinued, and the assets returned to the appropriate retirement trust  
8 fund. Any supplemental payments to retirees in addition to the benefits  
9 authorized herein shall not be funded from plan assets."

10 25. In the event that Section 1511-A of Measure B is applied to the vested  
11 contractual rights of the Affected Retirees and the Affected Beneficiaries to receive  
12 distributions from the SRBR as set forth above in paragraphs 17 and 18, as well as those  
13 entitlements as set forth above in Paragraph 17, those vested contractual rights and entitlements  
14 will have been abrogated and/or impaired by the City as a result of that action.

15 26. Section 1512-A of the Act, entitled "Retiree Healthcare" states in  
16 pertinent part:

17 "(b) Reservation of Rights. No retiree healthcare plan or benefit shall  
18 grant any vested right, as the City retains its power to amend, change or  
19 terminate any plan provision."

20 27. To the extent the City interprets and applies Section 1512-A paragraph  
21 (b) of Measure B to alter the status of the Affected Retirees' and Affected Beneficiaries' rights  
22 (a) to participate in the City's Retiree Medical Plan and/or the City's Retiree Dental Plan and  
23 (b) to have the Retirement Plan pay all or a prescribed portion of the premiums from vested  
24 contractual rights to non-vested rights, Section 1512-A, paragraph (b) of Measure B abrogates  
25 and/or substantially impairs the vested contractual rights, as well as those entitlements created  
26 by the application of the doctrine of promissory estoppel as set forth in paragraphs 13 and 14,  
27 of Affected Retirees and Affected Beneficiaries to participate in the City Medical Plan and the  
28 City Dental Plan and have the Plan pay all or a prescribed portion of the premiums.

1                   28.     Section 1504-A of Measure B, entitled "Reservation of Voter Authority"  
2 states in pertinent part:

3                   "Neither the City Council, nor any arbitrator appointed pursuant to  
4 Charter Section 1111, shall have the authority to agree to or provide  
5 any increase in pension and/or retiree health care benefits without voter  
6 approval, except that the Council shall have the authority to adopt Tier  
7 2 pension benefit plans within the limits set forth herein."

8                   29.     In the event that Section 1504-A of Measure B is interpreted by the City  
9 to apply to and is applied to the Affected Retirees' and Affected Beneficiaries' vested  
10 contractual right to receive additional Council-approved benefits, including but not limited to  
11 distributions from the SRBR; those vested contractual rights, as well as those entitlements  
12 created by the application of promissory estoppel as set forth in Paragraph 17, will have been  
13 abrogated and/or impaired by the City as a result of that action.

14                   30.     Unless and until enjoined by this Court, Defendants/Respondents, and  
15 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A  
16 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected  
17 Beneficiaries by abrogating and/or impairing their vested contractual rights in violation of  
18 Article I, Section 9 of the California Constitution.

19                   31.     No plain, adequate or complete remedy at law is available to  
20 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested contractual  
21 rights of the Affected Retirees and Affected Beneficiaries.

22                   32.     In the absence of such injunctive relief issued pursuant to law, the  
23 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

24                   33.     The successful prosecution of this Count will entitle Plaintiffs/Petitioners  
25 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

26                   **Count II [Taking Without Just Compensation In Violation**

27                   **Of The California Constitution (Article I, Section 19)]**

28                   34.     The allegations contained above in paragraphs 1 through 29 are



1 incorporated herein by reference as though set forth in full.

2 35. The enactment and implementation of Sections 1504-A, 1510-A, 1511-A  
3 and 1512-A paragraph (b) of Measure B, constitute a taking without just compensation, in  
4 violation of Article I, Section 19 of the California Constitution.

5 36. Unless and until enjoined by this Court, Defendants/Respondents, and  
6 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A  
7 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected  
8 Beneficiaries by taking their rights and entitlements without just compensation.

9 37. No plain, adequate or complete remedy at law is available to  
10 Plaintiffs/Petitioners to prevent the taking of the vested contractual rights and other  
11 entitlements of Affected Retirees and Affected Beneficiaries without just compensation.

12 38. In the absence of such injunctive relief issued pursuant to law, the  
13 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

14 39. The successful prosecution of this Count will entitle Plaintiffs/Petitioners  
15 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

16 **Count III [Deprivation of Property Without Due Process Of Law In Violation**  
17 **Of The California Constitution (Article I, Section 19)]**

18 40. The allegations contained above in paragraphs 1 through 29 are  
19 incorporated herein by reference as though set forth in full.

20 41. The enactment of Sections 1504-A, 1510-A, 1511-A and 1512-A  
21 paragraph (b) of Measure B, abrogating and/or impairing vested contractual rights of the  
22 Affected Retirees and Affected Beneficiaries, constitutes a deprivation of property without due  
23 process of law, in violation of Article I, Section 7 of the California Constitution.

24 42. Unless and until enjoined by this Court, Defendants/Respondents, and  
25 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A  
26 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected  
27 Beneficiaries by depriving them of their property without due process of law.

28 43. No plain, adequate or complete remedy at law is available to

1 Plaintiffs/Petitioners to prevent the deprivation of the property of the Affected Retirees and  
2 Affected Beneficiaries without due process of law.

3 44. In the absence of such injunctive relief issued pursuant to law, the  
4 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

5 45. The successful prosecution of this Count will entitle Plaintiffs/Petitioners  
6 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

7 **Count IV [Violation Of Separation of Powers Under The**  
8 **California Constitution (Article III, Section 3)]**

9 46. The allegations contained above in paragraphs 1 through 29 are  
10 incorporated herein by reference as though set forth in full.

11 47. Section 1515-A of Measure B, entitled "Severability" states in pertinent  
12 part:

13 "(b) If any ordinance adopted pursuant to the Act is held to be invalid,  
14 unconstitutional or otherwise unenforceable by a final judgment, the  
15 matter shall be referred to the City Council for determination as to  
16 whether to amend the ordinance consistent with the judgment, or  
17 whether to determine the section severable and ineffective."

18 48. Insofar as Section 1515-A of Measure B is interpreted in essence to give  
19 the City Council judicial power to decide the appropriate manner of relief to be provided upon  
20 a judgment that any portion of Measure B is invalid, unconstitutional or otherwise  
21 unenforceable, it constitutes a violation of the separation of powers between the legislative,  
22 executive, and judicial branches under Article III, Section 3 of the California Constitution.

23 49. Unless and until enjoined by this Court, Defendants/Respondents, and  
24 each of them, will implement and enforce Section 1515-A of Measure B by giving the City  
25 Council judicial powers in violation of the separation of powers between the legislative,  
26 executive, and judicial branches under Article III, Section 3 of the California Constitution.

27 50. No plain, adequate or complete remedy at law is available to  
28 Plaintiffs/Petitioners to prevent the violation of the separation of powers between the

1 legislative, executive, and judicial branches under Article III, Section 3 of the California  
2 Constitution.

3 51. In the absence of such injunctive relief issued pursuant to law, the  
4 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

5 52. The successful prosecution of this Count will entitle Plaintiffs/Petitioners  
6 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

7 **Count V [Violation of California Pension Protection Act**  
8 **(Article XVI, Section 17)]**

9 53. The allegations contained above in paragraphs 1 through 29, are  
10 incorporated herein by reference as though set forth in full.

11 54. Section 1513-A of Measure B, entitled "Actuarial Soundness (for both  
12 pension and retiree healthcare plans)" states in pertinent part:

13 "(c) In setting the actuarial assumptions for the plans, valuing the  
14 liability of the plans, and determining the contributions required to fund  
15 the plans, the objectives of the City's retirement boards shall be to:

16 (i) achieve and maintain full funding of the plans using at  
17 least a median economic planning scenario. The likelihood of  
18 favorable plan experience should be greater than the likelihood of  
unfavorable plan experience; and

19 (ii) ensure fair and equitable treatment for current and future  
20 plan members and taxpayers with respect to the costs of the plans, and  
minimize any intergenerational transfer of costs."

21 55. By enacting Section 1513-A, paragraph (c) of Measure B, the City has  
22 violated Article XVI, Section 17 of the California Constitution because it compromises the  
23 Board's fiduciary duties to Affected Retirees and Affected Beneficiaries by compelling the  
24 Board to consider equally the City's residents and taxpayers in making determinations affecting  
25 the Plan.

26 56. Unless and until enjoined by this Court, Defendants/Respondents, and  
27 each of them, will enforce Section 1513-A paragraph (c) of Measure B and thereby  
28 compromise the Board's fiduciary duties to Affected Retirees and Affected Beneficiaries by

1 compelling the Board to consider equally the City's residents and taxpayers in making  
2 determinations affecting the Plan, in violation of Article XVI, Section 17 of the California  
3 Constitution,

4 57. No plain, adequate or complete remedy at law is available to  
5 Plaintiffs/Petitioners to prevent the compromising of the Board's fiduciary duties to Affected  
6 Retirees and Affected Beneficiaries under Article XVI, Section 17 of the California  
7 Constitution.

8 58. In the absence of such injunctive relief issued pursuant to law, the  
9 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

10 59. The successful prosecution of this Count will entitle Plaintiffs/Petitioners  
11 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

12 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

13 60. The allegations contained above in Paragraphs 1 through 29, and in  
14 Paragraphs 35, 41, 47, 48, 54 and 55 are incorporated herein by reference as though set forth in  
15 full.

16 61. An actual controversy has arisen and now exists between  
17 Plaintiffs/Petitioners, on the one hand, and Defendants/Respondents, on the other hand,  
18 concerning the rights of the Affected Retirees and Affected Beneficiaries and the respective  
19 duties and obligations of Defendants/Respondents.

20 Plaintiffs/Petitioners contend that Sections 1504-A, 1510-A, 1511-A and  
21 1512-A paragraph (b) of Measure B: (a) violate Article I, Sections 7, 9 and 19 of the California  
22 Constitution as to the Affected Retirees and Affected Beneficiaries in that Sections 1504-A,  
23 1510-A, 1511-A and 1512-A paragraph (b) of Measure B abrogate and/or substantially impair  
24 vested contractual rights, and (b) abrogate and/or substantially impair entitlements created by  
25 the application of the doctrine of promissory estoppel. Conversely, Defendants/Respondents  
26 contend that Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph (b) of Measure B do not  
27 violate Article I, Sections 7, 9 and 19 of the California Constitution or improperly impact  
28 Affected Retirees or Affected Beneficiaries.

1                               Plaintiffs/Petitioners further contend that Section 1515-A of Measure B  
2 constitutes a violation of the separation of powers between the legislative, executive, and  
3 judicial branches under Article III, Section 3 of the California Constitution. Conversely,  
4 Defendants/Respondents contend that Section 1515-A of Measure B does not constitute a  
5 violation of the separation of powers between the legislative, executive, and judicial branches  
6 under Article III, Section 3 of the California Constitution.

7                               Finally, Plaintiffs/Petitioners contend that Section 1513-A, paragraph (c)  
8 of Measure B constitutes a violation of Article XVI, Section 17 of the California Constitution  
9 because it compromises the Board's fiduciary duties to Affected Retirees and Affected  
10 Beneficiaries by compelling the Board to consider equally the City's residents and taxpayers in  
11 making determinations affecting the Plan. Conversely, Defendants/Respondents contend that  
12 1513-A, paragraph (c) of Measure B does not constitute a violation of Article XVI, Section 17  
13 of the California Constitution.

14                           62. Pursuant to California Code of Civil Procedure Section 1060,  
15 Plaintiffs/Petitioners desire a judicial determination of this controversy and a declaration that  
16 Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph (b) of Measure B violate Article I,  
17 Sections 7, 9 and 19 of the California Constitution as to the Affected Retirees and Affected  
18 Beneficiaries; that Section 1515-A constitutes a violation of the separation of powers between  
19 the legislative, executive, and judicial branches under Article III, Section 3 of the California  
20 Constitution; and that Section 1513-A, paragraph (c) of Measure B constitutes a violation of  
21 Article XVI, Section 17 of the California Constitution.

22                           63. Such a judicial declaration is necessary and appropriate at this time  
23 under the circumstances in order that the Affected Retirees, Affected Beneficiaries,  
24 Plaintiffs/Petitioners and Defendants/Respondents may ascertain their respective rights.

25                           64. The successful prosecution of this Cause of Action will, therefore, entitle  
26 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of  
27 Civil Procedure.

28       ///

1                   **THIRD CAUSE OF ACTION FOR PETITION FOR WRIT OF MANDATE**

2                   65.     The allegations contained above in Paragraphs 1 through 12, and in  
3 Paragraphs 17, 18, 19, 24, 25, 28 and 29 are incorporated herein by reference as though set  
4 forth in full.

5                   66.     Unless the City is commanded by this Court to set aside any action it  
6 takes implementing and enforcing Section 1511-A of Measure B and to return to the SRBR any  
7 and all monies transferred out of the SRBR, the Affected Retirees and Affected Beneficiaries  
8 will suffer great and irreparable injury in that they will be deprived of their vested contractual  
9 rights as described above in violation of the Contract Clause of the California Constitution and  
10 the entitlements created by the application of the doctrine of promissory estoppel described  
11 above.

12                   67.     There are no administrative remedies available to Plaintiffs/Petitioners to  
13 compel the City to rescind action that may be taken to implement and enforce Section 1511-A  
14 of Measure B by transferring monies out of the SRBR which otherwise would be available for  
15 distributions to Affected Retirees and Affected Beneficiaries, as described above.  
16 Consequently, Plaintiffs/Petitioners have exhausted all available remedies.

17                   68.     Plaintiffs/Petitioners do not have an adequate remedy at law in that the  
18 harm posed by any action of the City in implementing and enforcing Section 1511-A of  
19 Measure B by transferring monies out of the SRBR which otherwise would be available for  
20 distributions is a continuing one, and the relief requested cannot be measured or satisfied by an  
21 award of monetary damages alone.

22                   69.     The successful prosecution of this Cause of Action will entitle  
23 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of  
24 Civil Procedure.

25                   WHEREFORE, Plaintiffs/Petitioners request that this Court:

26                   A.     Issue a Permanent Injunction enjoining Defendants/Respondents and  
27 each of them from in any way implementing or enforcing Sections 1504-A, 1510-A,  
28 1511-A, 1512-A paragraph (b), 1513-A paragraph (c), and 1515-A of Measure B as to

1 the Affected Retirees and Affected Beneficiaries;

2 B. Declare that Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph  
3 (b) of Measure B substantially impair and/or abrogate (a) vested contractual rights of  
4 the Affected Retirees and Affected Beneficiaries in violation of the Contract Clause of  
5 the California Constitution and (b) entitlements created by the application of the  
6 doctrine of promissory estoppel;

7 C. Declare that Section 1515-A of Measure B violates Article III, Section 3  
8 of the California Constitution;

9 D. Declare that Section 1513-A paragraph (c), of Measure B violates Article  
10 XVI, Section 17 of the California Constitution

11 E. Issue its Peremptory Writ of Mandate (1) commanding the City to set  
12 aside any action it has taken implementing and enforcing Section 1511-A of Measure B  
13 by transferring monies out of the SRBR so as to prevent further distributions; and (2) to  
14 return those monies to the SRBR to be available for distributions to Affected Retirees  
15 and Affected Beneficiaries.

16 F. Award Plaintiffs/Petitioners their costs of suit;

17 G. Award Plaintiffs/Petitioners reasonable attorneys' fees in accordance  
18 with California Code of Civil Procedure Section 1021.5; and,

19 H. Award such other and further relief as the Court deems proper.

20 Respectfully submitted,

21 SILVER, HADDEN, SILVER, WEXLER & LEVINE

22  
23 DATED: October 5, 2012

24 By:

  
STEPHEN H. SILVER

25 Attorneys for Plaintiffs/Petitioners SAN JOSE  
26 RETIRED EMPLOYEES ASSOCIATION,  
27 HOWARD E. FLEMING, DONALD S. MACRAE,  
28 FRANCES J. OLSON, GARY J. RICHERT and  
ROSALINDA NAVARRO

**THE CITY OF SAN JOSE  
CITY CHARTER**

**ARTICLE XV**

**RETIREMENT**

**SECTION 1500. DUTY TO PROVIDE RETIREMENT SYSTEM.**

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees; provided, however, the Council shall not establish any new or different plan after November 3, 2010 that is not actuarially sound.



Print

San Jose, CA Code of Ordinances

**Chapter 3.16**  
**RETIREMENT SYSTEM PRIOR TO OCTOBER 1, 1946**

Sections:

- 3.16.010 Persons eligible.
- 3.16.020 City manager powers.
- 3.16.030 Physical examination required.
- 3.16.040 Physical disability as condition of retirement.
- 3.16.050 Pension age.
- 3.16.060 Amount of pension - Computation.
- 3.16.070 Amount of pension - After June 1, 1943.
- 3.16.080 Certificate of monthly amounts payable.
- 3.16.090 Retirement allowance - Payment stopped when.
- 3.16.100 Effect of termination of position.
- 3.16.110 Provisions not to be used after October 1, 1946.

**3.16.010 Persons eligible.**

Any officer or employee of the city other than the city manager, city councilmen and members of the police and fire departments, may be retired in accordance with the provisions of this chapter.

(Prior code § 2902.)

**3.16.020 City manager powers.**

The city manager is empowered to ascertain what officers or employees of the city subject to the terms of this chapter, should be retired under its provisions.

(Prior code § 2902.1.)

**3.16.030 Physical examination required.**

Before such determination shall be made, the city manager shall cause the officer or employee in question to be examined by such physician or physicians as he may appoint for that purpose.

(Prior code § 2902.2.)

**3.16.040 Physical disability as condition of retirement.**

No officer or employee shall be retired unless the examining physician or physicians shall find that he is unable, by reason of physical disabilities, to continue his duties as such officer or employee, or that his physical condition is such as to render his continued service hazardous to himself or others.

(Prior code § 2902.3.)

**3.16.050 Pension age.**

No officer or employee shall be pensioned under the provisions of this chapter unless he has attained the age of fifty-five years.

(Prior code § 2902.4.)

**3.16.060 Amount of pension - Computation.**

Any officer or employee pensioned under the provisions of this chapter who has been for twenty years, in the aggregate, in fulltime service of the city or any municipality heretofore or hereafter consolidated with the city, either as an officer or employee of said city, shall be paid a monthly retirement allowance equal to one-quarter of the monthly salary paid for the same position during the same month during which the pension is paid; provided, further, that there may be pensioned under the provisions of this chapter any officer or employee, otherwise eligible, who has not been in the aggregate in the full-time service of the city for a period of twenty years, who may be paid a monthly retirement allowance which shall bear the same percentage of his computed allowance as his length of service with the city bears to twenty years.

(Prior code § 2902.5.)

**3.16.070 Amount of pension - After June 1, 1943.**

On and after June 1, 1943, and regardless of any other provisions of this chapter, the provisions of which were adopted by Ordinance 2922, adopted June 21, 1943, no officer or employee, heretofore or hereafter pensioned under such ordinance shall receive less than one-quarter of the top salary for Class B labor paid during the same month for which the pension is paid.

(Prior code § 2902.8.)

**3.16.080 Certificate of monthly amounts payable.**

The secretary of the civil service commission shall from time to time, as occasion requires, furnish the city auditor with a certificate showing the monthly amounts payable under this chapter due to changes in salary rates or titles of positions of officers or employees now holding the respective positions of persons retired under the provisions of this chapter, thus showing the equivalent titles of positions and salaries upon which retirement payments are to be based hereunder.

(Prior code § 2902.10.)

**3.16.090 Retirement allowance - Payment stopped when.**

A. Any retirement allowance shall cease when the person retired dies, commits a felony, becomes dissipated, or becomes an habitual drunkard.

B. No officer or employee shall be paid any retirement allowance pursuant to the provisions of this chapter for any period of time during which he receives any workmen's compensation payment from the city, nor during any period during which he resides outside the city.

(Prior code § 2902.6, 2902.7.)

**3.16.100 Effect of termination of position.**

In the event that a given position ceases to exist, and an officer or employee who formerly held such position has been retired under the provisions of this chapter, the city manager shall determine and certify to the clerk of the civil service commission the amount that said salary would be, using as a basis for his determination the salary last paid to such officer or employee, and the upward or downward changes in the salaries paid to officers or employees of the city doing work of equivalent importance.

(Prior code § 2902.11.)

**3.16.110 Provisions not to be used after October 1, 1946.**

No officer or employee shall be pensioned under the provisions of this chapter on or after October 1, 1946.

(Prior code § 2902.9.)

**Chapter 3.20  
FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM**

**Sections:**

- 3.20.010 Purpose of system.
- 3.20.020 Established - Operative date - Name.
- 3.20.030 Board of administration - Creation.
- 3.20.040 Duties of city officers.
- 3.20.050 Board of administration - Control of funds.
- 3.20.060 Board of administration - Annual report.
- 3.20.070 Board of administration - Additional powers.
- 3.20.080 Certain uses of funds prohibited.
- 3.20.090 No retirement for five years after October 1, 1941.
- 3.20.100 City manager participation permitted when.
- 3.20.110 Optional participation.
- 3.20.120 Period of service for eligibility.

- 3.20.130 Service retirement.
- 3.20.140 Retirement after twenty years' service - Conditions.
- 3.20.150 Retirement after twenty years' service - Application.
- 3.20.160 Retirement after twenty years' service - Four-fifths' vote of board required.
- 3.20.170 Compulsory retirement - Extensions.
- 3.20.180 Retirement for the good of the service - Four-fifths' vote of board required.
- 3.20.190 Nonservice-connected disability retirement.
- 3.20.200 Service-connected disability retirement - Paid when.
- 3.20.210 Service-connected disability retirement - Conditions.
- 3.20.220 Evidence of disability.
- 3.20.230 Service-connected disability retirement - Computation.
- 3.20.240 Safeguards on disability retirement.
- 3.20.250 Restoration to service - Disability considered permanent when.
- 3.20.260 Extent of disability - Board authority.
- 3.20.270 Disability allowance cessation.
- 3.20.280 Military service credit - Authorized when.
- 3.20.290 Military service credit - Contributions.
- 3.20.300 Military service credit - Basis for retirement payments.
- 3.20.310 Military service credit - Contributions by city.
- 3.20.320 Military service credit - Right to make election until May 1, 1962 to obtain credit for prior service.
- 3.20.330 Contributions - Schedule of percentages.
- 3.20.340 Contributions - Actuarial investigation - Tables and rate revisions.
- 3.20.350 Contributions - Disposition for period ending December 1, 1951.
- 3.20.360 Contributions - Computation.
- 3.20.370 Contributions - Consent to deduction from salary.

- 3.20.380 Contributions - Continuation.
- 3.20.390 Gifts or donations to fund.
- 3.20.400 Purchase of additional annuity - Permitted when.
- 3.20.410 Built-up payments - Permitted when.
- 3.20.420 Built-up payments - No increased city contribution.
- 3.20.430 Funds - Disposition - City treasurer duties.
- 3.20.440 Payments from fund - Before December 1, 1951.
- 3.20.450 Operating expenses.
- 3.20.460 Payments from fund - After December 1, 1951.
- 3.20.470 Retirement petition.
- 3.20.480 Retirement allowance - Reports required - Termination conditions.
- 3.20.490 Retirement allowance - Method of payment.
- 3.20.500 Benefits exempt from attachment.
- 3.20.510 Workmen's compensation.
- 3.20.520 Contributions - Disposition on separation from or reentry to service.
- 3.20.530 Contributions - Returned to estate when.
- 3.20.540 Contributions - Difference to widow when.

**3.20.010 Purpose of system.**

The purpose of this Chapter 3.20 is to provide a means whereby employees of the city receiving a monthly compensation for city service in its classified and unclassified civil service, (excepting elected officials, the city manager, members of appointive boards, and city employees eligible to the police and fire department retirement system), who become incapacitated as a result of age or disability may be replaced by more capable employees, thus promoting economy and efficiency in the public service without prejudice and without inflicting a hardship upon the employees removed, and at the same time to recognize a public obligation to such public employees as may become incapacitated, by making provisions for the retirement of aged and disabled employees by the payment of retirement benefits.

(Prior code § 2901.)

**3.20.020 Established - Operative date - Name.**

There is hereby continued a retirement system for officers and employees of the city receiving a monthly compensation for services in its classified and unclassified civil service, including regular

employees of the public library but excepting elected officials, the city manager, members of appointive boards and city employees eligible to the police and fire department retirement system. Said system, established pursuant to Ordinance 2774, approved by vote of the people on May 18, 1942, became operative on October 1, 1941, and is known as the "federated city employees retirement system."

(Prior code § 2901.1.)

### **3.20.030 Board of administration - Creation.**

For the creation of the board of administration, see Part 10 of Chapter 2.08 of this Code.

(Prior code § 2901.2.)

### **3.20.040 Duties of city officers.**

The treasurer, auditor, city attorney and retirement and benefits administrator shall perform such duties in reference to the retirement system and fund as the board of administration may from time to time direct, and shall receive no additional compensation for any services so rendered.

(Prior code § 2901.3; Ord. 21624.)

### **3.20.050 Board of administration - Control of funds.**

The board shall have exclusive control of the administration and investment of said retirement fund, and shall transmit to the city auditor monthly, on a date to be selected by the board, an itemized list of, and showing the authority for, all payments to be made from said fund for retirement benefits currently payable, and the treasurer shall pay all warrants therefor against said retirement fund only when so authorized, and when signed by the city auditor and countersigned by the city manager and attested by the clerk of the board.

(Prior code § 2901.4.)

### **3.20.060 Board of administration - Annual report.**

Within ninety days after the end of each fiscal year or, if later, within thirty days after the submission to the city council of an audited annual fiscal report of the retirement system's funds required by the city Charter or ordinance, the board shall render to the city council and city manager an annual report for such preceding fiscal year. The report shall contain a statement of the board's work for such period, and shall show all receipts and disbursements, the names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each therefor, and the balance remaining in the retirement fund after such payments. The report may contain recommendations for or against changes in the retirement system.

(Prior code § 2901.5; Ord. 18767.)

### **3.20.070 Board of administration - Additional powers.**

The board of administration shall, in addition to other powers granted in this chapter, have power:

A. To compel witnesses to attend and testify before it upon all matters connected with its duties under this chapter, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and the president, or any member of said board, may administer oaths to such

witnesses;

B. To make all needed rules and regulations for its guidance in accordance with this chapter, and if it shall be impracticable for the board to determine from the records the length of service, the compensations or the age of any member, then the board may estimate for the purpose hereof such length of service, compensation or age.

(Prior code §§ 2901.35, 2901.36, 2901.37.)

### **3.20.080 Certain uses of funds prohibited.**

Except as provided in this chapter, no member or employee of the board of administration shall have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom. No member of the retirement system and no member or employee of the board, directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of the board become an endorser or surety or become in any manner an obligor for moneys invested by the board.

(Prior code § 2901.6.)

### **3.20.090 No retirement for five years after October 1, 1941.**

It is provided that no order for retirement shall be granted any member under the terms and conditions of this chapter until five years have elapsed after October 1, 1941, the effective date of Ordinance 2774.

(Prior code § 2901.56.)

### **3.20.100 City manager participation permitted when.**

The provisions of Section 1 of Ordinance 2774 excepting the city manager from membership in the retirement system shall not apply in cases where any officer or employee who, prior to his appointment as city manager, has served the city in any other capacity or capacities, and who prior to such appointment was a member of the federated employees retirement system. In such case, he shall not forfeit his rights as a member thereof, and such individual shall continue to make payments into the retirement fund at the same rate that he would have had he continued in the same position occupied by him immediately prior to his appointment as city manager.

(Prior code § 2901.15.)

### **3.20.110 Optional participation.**

If any employee eligible to participate in the retirement plan set forth in this chapter is sixty-five years of age or over at the date Ordinance 2774 became effective, such employee may elect to exempt himself from the provisions of this chapter by notifying the board of administration in writing, within fifteen days after the effective date of Ordinance 2774, of his election to exempt himself from the provisions of said ordinance. Except as in this section provided, participation in the retirement plan set forth in this chapter shall be mandatory upon the employees named in Section 3.20.010 of this chapter.

(Prior code § 2901.54.)

### **3.20.120 Period of service for eligibility.**

In determining the period of service necessary to render any employee eligible for retirement allowance under the provisions of this chapter, aggregate service only shall be considered, dating from the date when such employee was placed upon the payroll now on file with the city auditor, or as shown upon time cards and work orders on file in the department of public works, or as otherwise shown by city records. Such service need not be continuous and may be in any capacity, and any rights acquired by service shall not be lost by reason of resignation or withdrawal from the service except as otherwise expressly provided.

(Prior code § 2901.10.)

### **3.20.130 Service retirement.**

Any such employee who shall have served in the employ of the city for thirty years and who is sixty years of age, with a minimum of thirty years in the aggregate in any capacity whatsoever, shall, on his petition as prescribed in Section 3.20.470, or by order of the board of administration if it be deemed for the good of the service, be retired from further service and shall thereafter, during his lifetime, be paid in equal monthly installments from the retirement fund a yearly retirement allowance equal to one-half of the average annual salary attached to the position held by him during five years prior to the date of such petition or such order of the retirement board; provided, that for the purpose of this chapter, no average monthly salary shall, for the purpose of computing retirement allowance, be held as exceeding two hundred and fifty dollars per month. No involuntary removal of any such employee from the service shall deprive him of the benefits of this section after said employee has thirty years' service.

(Prior code § 2901.7.)

### **3.20.140 Retirement after twenty years' service - Conditions.**

After twenty years' service, any employee may apply to the board of administration for retirement, or may be retired by the board on its own motion, on a limited annual allowance equal to such proportionate share of one-half of the average annual salary attached to the position held by such applicant during five years prior to the filing of such application as the number of years actually served bears to thirty years. For example, if such service has been for twenty-two years, the allowance shall be twenty-two-thirtieths of said one-half of the average annual salary.

(Prior code § 2901.22.)

### **3.20.150 Retirement after twenty years' service - Application.**

Upon the receipt of the application described in Section 3.20.140, the board of administration shall investigate the same, and in its discretion grant or deny such application; provided, that any denial of such application shall be without prejudice to the filing of a new application after the lapse of three months. No removal of any such employee from the service after twenty years' service shall operate to deprive him of the benefits of Sections 3.20.140 through 3.20.160 except when such removal be for habitual drunkenness, notorious insubordination, or conviction of a felony, and then only in the event the board of administration in its discretion orders that such removal operate to deprive such employee of the benefits hereof.

(Prior code § 2901.23.)

### **3.20.160 Retirement after twenty years' service - Four-fifths' vote of board required.**



No order for retirement, as in Sections 3.20.140 through 3.20.160 provided, shall be effective except upon a four-fifths' vote of the members of the board of administration, and then only after a ten-day notice to the member of time and place of meeting of the board of administration for consolidation of said member's retirement.

(Prior code § 2901.24.)

### **3.20.170 Compulsory retirement - Extensions.**

A. The age of compulsory retirement shall be sixty-five years. Each member who has attained the age of compulsory retirement subsequent to the effective date of Ordinance 2774 shall be retired by the board, and any member who has passed the age of compulsory retirement at the effective date of this chapter shall be retired by the board immediately, provided that upon application of any member subject to compulsory retirement, the board may allow the member an extension of one year if in its judgment the continuance of employment of such member will be advantageous to the city service. The board may renew such extension from year to year, but the board shall not grant extensions under this section to any member for more than an aggregate period of five years.

B. Any employee having reached the compulsory age for retirement but having less than thirty years in the aggregate of continuous service to his credit may retire on limited annual allowance equal to such proportionate share of one-half of the average annual salary attached to the position held by applicant prior to the filing of such application as the number of years actually served bears to thirty.

(Prior code § 2901.9.)

### **3.20.180 Retirement for the good of the service - Four-fifths' vote of board required.**

No member may be retired by order of the board of administration for the good of the service unless said order is voted by a four-fifths' vote of the members of the board of administration after ten-day notice to the employee of said meeting, such notice to recite the time and place of meeting of the board of administration for consideration of the employee's retirement for the good of the service.

(Prior code § 2901.8.)

### **3.20.190 Nonservice-connected disability retirement.**

Should any employee who has been a member of the federated city employees retirement system for at least ten years suffer any bodily injury or sickness which is not service-connected, and as a result thereof becomes so physically or mentally disabled as to render necessary his retirement from active service, the board of administration shall order and direct that such person be paid during the period of such disability a retirement allowance not to exceed Fifty percent of the amount provided for in this chapter for the monthly retirement allowance for members retired on service-connected disability. The amount of the allowance herein provided for shall be determined by the board of administration within thirty days after the hearing of the petition for retirement. In determining the amount, the board shall take into consideration the circumstances of the injury, the nature of the disability, whether total or partial, and make its order accordingly. In accordance with the provisions of Sections 3.16.240 and 3.16.250, the retirement allowance herein provided for may, upon determination of fitness to return to duty, be terminated.

(Prior code § 2901.21.)

### **3.20.200 Service-connected disability retirement - Paid when.**

Should any employee, by reason of bodily injury received in or sickness resulting from the discharge of his duties, become so physically or mentally disabled as to render necessary his retirement from active service, he shall be paid from the date of disability to the date of retirement compensation in accordance with the applicable laws and ordinances of the city with reference thereto, and said payment shall not be a charge on the retirement fund, but in no event shall said payment be less than that provided by the provisions of the Workmen's Compensation Insurance and Safety Act of 1917, and amendments thereto, heretofore or hereafter adopted.

(Prior code § 2901.18.)

### **3.20.210 Service-connected disability retirement - Conditions.**

No order for retirement as hereinafter provided shall be made by the board of administration until the employee seeking the same shall have first made application to the Industrial Accident Commission of the state for the disability benefits provided by the Workmen's Compensation Act of the state. After an award with reference to said disability has been made by the commission, the employee shall then be entitled to such additional benefits as are provided in this chapter, so that he may be ordered retired and thereafter paid during his lifetime his yearly allowance equal to one-half the amount of the average annual salary attached to the position held by him during five years prior to the date of such retirement.

(Prior code § 2901.19.)

### **3.20.220 Evidence of disability.**

No person shall be retired for service-connected and nonservice-connected disability under this chapter, or receive any allowance therefor, unless there shall be filed with the board of administration certificates of disability subscribed and sworn to by three regularly licensed practicing physicians in the state, one to be selected by the petitioner, whose certificate of disability shall be attached to the petition, one of whom shall be the health officer, and one of whom shall be selected by the board of administration. The board may require other and additional evidence of disability before ordering such retirement, but only on satisfactory evidence of disability and of the right to be retired, as provided herein, shall said board of administration retire such person.

(Prior code § 2901.32.)

### **3.20.230 Service-connected disability retirement - Computation.**

A. It is the intention of this chapter, as more fully set forth in Section 3.20.510 hereof, that the retirement allowance payable hereunder shall not be additional to any compensation allowed pursuant to the Workmen's Compensation Act of the state, so that disability payments made pursuant to said Act shall be included in computing the retirement allowance herein provided for, and said payments shall not be a charge against the retirement fund.

B. In accordance with the provisions of Sections 3.20.250 and 3.20.270, the retirement allowance herein provided for may, upon determination of fitness to return to duty, be terminated.

(Prior code § 2901.20.)

### **3.20.240 Safeguards on disability retirement.**

Except as otherwise provided in Sections 3.20.250 and 3.20.270, any person retired for either a service-connected or nonservice-connected disability may be required at any time, after ten days'

notice, to submit himself for examination as to fitness for duty. The examining board shall consist of the city health officer, a physician selected by the board of administration, and a physician selected by the person seeking retirement. All of said physicians shall be licensed and practicing physicians in the state. The decision of the examining board as to fitness for duty shall be binding upon the board of administration and upon such person. Nothing herein contained shall prevent a new request by the board of administration to the examining board to determine fitness for duty, after the lapse of ninety days from the filing of the decision of the examining board.

(Prior code § 2901.30.)

### **3.20.250 Restoration to service - Disability considered permanent when.**

No member shall be ordered restored to active service until a hearing is held by the board of administration for said purpose, with ten days' notice of time and place of said hearing being given to the member in advance thereof; and provided further, that the board of administration shall not have the power to order any member restored to active service who has been absent from his duties by reason of disabilities for a continuous period of two years. Two years' continuous temporary disability shall thereafter be mandatory permanent disability.

(Prior code § 2901.29.)

### **3.20.260 Extent of disability - Board authority.**

The decision of the board with reference to the nature and extent of the disability shall be final and conclusive.

(Prior code § 2901.33.)

### **3.20.270 Disability allowance cessation.**

Any allowance granted to any such employee for disability shall cease when the disability ceases, and such person shall, subject to the then existing rules and provisions of the Charter governing the employment of city employees, be restored to active service in the position in which he was serving at the time of his disability; the time he is not in active service, while receiving a retirement allowance under this chapter, shall be computed in calculating his aggregate service for all purposes under the provisions hereof.

(Prior code § 2901.28.)

### **3.20.280 Military service credit - Authorized when.**

Any person granted a leave of absence pursuant to the terms of Section 27 of Ordinance 3100, adopted October 1, 1945, who was a member of the federated retirement system, shall be deemed, for the purposes of this chapter, to have spent such time in the employ of the city, and credit shall be allowed under the retirement system for such time, and in the same manner as though such person had not been absent on military leave. Any person desirous of such credit must elect to contribute to the retirement fund an amount equal to the amount he would have contributed had he not had such leave. Such election must be exercised within five years after the reentry into the employment of the city. Payments shall be made by an individual exercising the option hereunder in the manner and in the amounts to be fixed by the board of administration. The board shall for such purposes adopt such rules governing the manner and the amount of payments as to them shall seem just and equitable.

(Prior code § 2901.11.)

**3.20.290 Military service credit - Contributions.**

If a member who affirmatively exercises the election provided in Section 3.20.280 shall default in any of the contributions to be paid into the retirement fund under said election, he shall not receive credit for full-time service in the employ of the city during the period covered by said default. Provided, however, that in the event a member does not elect to make the contributions, as herein provided, such member shall not receive credit for full-time service with the city for the period of his absence, but such absence shall not break the continuity of service required of such member to entitle him to a retirement allowance, provided his years of service in the employ of the city in the aggregate would entitle him to a retirement allowance.

(Prior code § 2901.12.)

**3.20.300 Military service credit - Basis for retirement payments.**

The retirement payments shall be based upon the amounts he would have contributed had he not had such leave.

(Prior code § 2901.13.)

**3.20.310 Military service credit - Contributions by city.**

The city shall contribute to the retirement system on account of any member who exercises affirmatively the election provided in Section 3.16.280 in the same manner and in the same amounts as if said member had not been absent in such service.

(Prior code § 2901.14.)

**3.20.320 Military service credit - Right to make election until May 1, 1962 to obtain credit for prior service.**

A. Notwithstanding the provisions of Sections 3.20.280, 3.20.290 and 3.20.300, any person who is an employee of the city and is a member of the retirement system established by Chapter 3.24 of this Code, who was entitled under Section 3.20.280 to obtain credit for service while on military leave, but for any reason failed to do so, shall be entitled to obtain credit for service for such military leave if, prior to May 1, 1962, such person shall deposit with the retirement board the amount of money he would have contributed to the retirement fund had he not been absent on such leave, together with an amount of money equal to the total amount of interest which would have been credited to such person's contributions had said contributions been on deposit in said retirement fund for the period commencing January 1, 1951, and ending with the date of such person making said deposit.

B. In lieu of the contribution required of the city by Section 3.20.310, the city shall pay the retirement fund an amount equal to that contributed by persons obtaining credit for service while on military leave pursuant to the provisions of this section, said payment to be made by the city no later than sixty days after payment by such persons.

(Prior code § 2901.14a.)

**3.20.330 Contributions - Schedule of percentages.**

For the purpose of establishing and maintaining the retirement fund on a reserve basis, the city council shall make provision in its budget each fiscal year, beginning with the fiscal year 1941-42, and continuing throughout the future, for the payment by the city auditor monthly into said fund of an amount equal to the monthly contribution of all such employees, as the city's contribution; and the city auditor shall deduct from the monthly salary of each member of the system from and after the effective date of Ordinance 2774 the rates of monthly salary deductions or contributions of members of the retirement system expressed as percentage of salary to be paid into the retirement fund, according to age and sex at the time of entry into the retirement system, shall be fixed according to the percentages now levied by the state in its State Employees' Retirement System, for each officer or employee member as follows:

Age at Entry into System	Male	Female
21	3.17	3.46
22	3.20	3.51
23	3.23	3.56
24	3.26	3.60
25	3.30	3.66
26	3.34	3.72
27	3.38	3.78
28	3.43	3.84
29	3.48	3.91
30	3.53	3.98
31	3.58	4.05
32	3.63	4.12
33	3.69	4.20
34	3.75	4.28
35	3.81	4.36
36	3.87	4.44
37	3.94	4.52
38	4.01	4.60
39	4.08	4.68
40	4.15	4.77
41	4.23	4.86

42	4.31	4.95
43	4.39	5.04
44	4.47	5.13
45	4.55	5.22
46	4.63	5.32
47	4.71	5.42
48	4.80	5.52
49	4.89	5.62
50	4.98	5.72
51	5.07	5.82
52	5.16	5.93
53	5.25	6.04
54	5.35	6.15
55	5.45	6.26
56	5.55	6.37
57	5.65	6.48
58	5.75	6.59
59	5.85	6.71
60	5.95	6.83
61	6.05	6.95
62	6.16	7.07
63	6.27	7.19
64 and over	6.38	7.31

(Prior code § 2901.38.)

### **3.20.340 Contributions - Actuarial investigation - Tables and rate revisions.**

The rate of contribution established for age sixty-four shall be the rate for any member who has attained a greater age at entrance into the retirement system. At the end of the five-year period beginning with the effective date of Ordinance 2774, and at the end of every five-year period thereafter, the board shall cause to be made an actuarial investigation into the mortality, service and compensation

experiences of the members and beneficiaries as defined by Ordinance 2774, and shall further cause an actuarial valuation of the assets and liability of the retirement system, and upon the basis of such investigation and valuation shall:

A. Adopt for the retirement system such mortality, annuity, service and other tables as may be deemed necessary;

B. Revise or change the rates of contributions by members on the basis of such mortality, annuity, service and other tables.

(Prior code §§ 2901.39, 2901.40, 2901.41.)

### **3.20.350 Contributions - Disposition for period ending December 1, 1951.**

It is further provided that for the period ending December 1, 1951, said contributions by the city and by such employees shall remain intact in said fund or be invested for the benefit of the fund during said period, as hereinafter provided.

(Prior code § 2901.42.)

### **3.20.360 Contributions - Computation.**

In computing employee members' monthly contributions, the rate of contribution shall be applied by the city auditor only to so much of the earnable compensation as does not exceed two hundred fifty dollars per month.

(Prior code § 2901.43.)

### **3.20.370 Contributions - Consent to deduction from salary.**

Every employee of the city who becomes a member of this retirement system created by this chapter shall be deemed to consent and agree to the deductions from salary or compensation as provided herein, and payments less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such employee during the period covered by such payment, except the right to the benefits to which he shall be entitled under the provisions hereof.

(Prior code § 2901.44.)

### **3.20.380 Contributions - Continuation.**

The said deductions from salary or compensation shall continue until membership ceases or until the member retires on a retirement allowance.

(Prior code § 2901.45.)

### **3.20.390 Gifts or donations to fund.**

There shall also be paid into said fund all gifts or donations to the fund from any source.

(Prior code § 2901.46.)

**3.20.400 Purchase of additional annuity - Permitted when.**

The board of administration shall have the power to allow any member to pay into the retirement funds additional sums over and above said member's regular payments for the purpose of providing a larger annuity for said member on retirement, but nothing herein contained shall be construed to permit such member by said additional payments to shorten his time of service as required for retirement under this chapter.

(Prior code § 2901.25.)

**3.20.410 Built-up payments - Permitted when.**

Any employee eligible to the benefits of this retirement plan shall have the right to apply to the board of administration for permission to pay into the retirement fund additional sums over and above his age requirement payments for the purpose of permitting said employee to provide for his own retirement at the full service retirement allowance without the full thirty years' service requirement, and the board of retirement shall have the power to allow said built-up payments. The limitations of a top salary of one hundred and twenty-five dollars monthly shall not apply to excess benefits purchased by additional contributions made by the member under the provisions of Sections 3.04.250, 3.04.270 and 3.04.400 through 3.04.420.

(Prior code § 2901.26.)

**3.20.420 Built-up payments - No increased city contribution.**

The contribution of the city to the retirement fund shall not be increased by reason of any built-up or accelerated voluntary payments made by any employee.

(Prior code § 2901.27.)

**3.20.430 Funds - Disposition - City treasurer duties.**

All moneys for the fund shall be paid into the city treasury and kept by the treasurer in banks legal for savings, in accordance with the laws of the state and the Charter of the city. Said fund shall be kept inviolate and no portion thereof shall ever be transferred to any other fund or used for any other purposes than those specified herein. Reserves in said fund not needed in any fiscal year for current payments of retirement allowances ordered by the board, the board may, as directed by resolution of the board of administration, invest for the benefit of said fund as other public funds may be invested, in accordance with the laws of the state and the Charter of the city.

(Prior code § 2901.49.)

**3.20.440 Payments from fund - Before December 1, 1951.**

For the purpose of meeting all current demands during the period ending December 1, 1951, for the payment of retirement allowances ordered by the board of administration and the necessary expenses of the board, the city council shall make further special provision in its budget each fiscal year during said period ending December 1, 1951, for payment by the city auditor into said fund, as required, such amounts as shall be sufficient to meet all said current running demands.

(Prior code § 2901.47.)



### **3.20.450 Operating expenses.**

Any necessary operating expenses of the system shall be charged against the city until December 1, 1951.

(Prior code § 2901.55.)

### **3.20.460 Payments from fund - After December 1, 1951.**

After the completion of the period ending December 1, 1951, the city council shall not further make the special provision in its annual budgets, as prescribed in the Section 3.20.440, to bear solely the cost of retirement payments ordered by the board, but the same shall thereafter be paid out of said fund as herein otherwise provided to be established and maintained; provided, that after the completion of the period ending December 1, 1951, whenever the fund shall be insufficient to meet said costs, the board of administration shall have the power to make demands upon the city council, and equally upon all such employees, for additional payments into the fund of amounts sufficient to meet the same, and the city council shall accordingly make provision in its budget each fiscal year for its half of the amount of such demands, which shall be paid into said fund by the city auditor. The city auditor shall deduct and pay into the fund from the salary of each of such employees his pro rata part of the other half of the amount of such demands, but in no event shall said demands for additional payments to be made by the city and equally in the aggregate by such employees exceed ten percent of the total annual payroll of such employees.

(Prior code § 2901.48.)

### **3.20.470 Retirement petition.**

Any employee who desires to be retired from his position shall file with the board of administration a verified petition, which shall contain the name and age of the petitioner, the position held by him on the date of filing the petition, the salary of such position, the position held and the salary received by said petitioner during the five years prior to the date of filing said petition, the date of entry into the service, and the aggregate service of said petitioner. If such petition is based upon a disability, it shall also set forth the nature and extent thereof, whether service-connected, nonservice-connected, or both, and when and how received. Such petition may be filed by the legally appointed guardian of any person entitled to a retirement allowance hereunder. Upon filing of such petition, the board of administration shall fix a date within thirty days from the date of filing for the hearing thereof, and shall notify the petitioner of the date of such hearing.

(Prior code § 2901.31.)

### **3.20.480 Retirement allowance - Reports required - Termination conditions.**

Whenever any person who shall receive any retirement allowance hereunder shall fail to report himself as herein requested, or shall wilfully disobey the requirements and orders of the board of administration, or shall be convicted of a felony, become dissipated, or become a nonresident of this state except by permission of the board, then the board may, after notice to the person receiving retirement allowance, order that the retirement payments to him shall immediately cease and terminate, and the board, in its discretion, may order the retirement allowance terminated, except that the provision with respect to becoming a nonresident of the state shall apply to disability retirements and not to earned retirement after full service. The mailing of said notice by registered mail to the last known address of said person, as shown on the books of said board, shall constitute service of the notice herein required to be given.

(Prior code § 2901.34.)

### **3.20.490 Retirement allowance - Method of payment.**

The retirement allowance provided for in this chapter shall be payable in equal monthly installments from the date of retirement during the life of the retired employee, unless such allowance shall be terminated by the board of administration as provided in Section 3.20.480.

(Prior code § 2901.16.)

### **3.20.500 Benefits exempt from attachment.**

The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, or any other right or benefit accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created herein, shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically provided in this chapter.

(Prior code § 2901.17.)

### **3.20.510 Workmen's compensation.**

The retirement allowances payable under this chapter shall not be additional to any compensation allowed pursuant to the Workmen's Compensation Insurance and Safety Act of 1917 of the state, and amendments thereto, heretofore or hereafter adopted. In each instance where a person is granted a retirement allowance hereunder, and who is receiving compensation under and pursuant to the provisions of said Act, there shall be paid from said retirement fund an amount which, when added to the compensation allowed under the Act, will equal the total monthly allowance herein provided for. In cases where the compensation allowed under the Act is greater than the retirement allowance, no payments shall be made from the retirement fund as long as compensation in excess of the retirement allowance herein provided is paid pursuant to said Act.

(Prior code § 2901.50.)

### **3.20.520 Contributions - Disposition on separation from or reentry to service.**

If any employee becomes separated from the service, either voluntarily or involuntarily, then and in that event all moneys paid into the fund by such employee shall be returned to him; and in the event that he shall thereafter reenter the service as such employee in any capacity he shall repay into such fund, upon such reentry, an amount equal to the sum returned to him at the time of his separation from the service, and he shall not be entitled to any benefits hereunder until said amount has been repaid into said fund.

(Prior code § 2901.51.)

### **3.20.530 Contributions - Returned to estate when.**

If any such employee shall die under circumstances not covered by this chapter, then and in that event all moneys, including interest earned not exceeding two percent, paid into said fund by such employee shall be returned to his estate.

(Prior code § 2901.52.)

### **3.20.540 Contributions - Difference to widow when.**

In the event of the death of a member drawing retirement compensation, if at the time of the death of said member he has received less than twelve monthly retirement payments, then the difference between the number of payments said member received up to the time of his death and twelve payments shall be paid in monthly payments into said member's estate or to his widow. For example, if a member dies after he has retired and has received three monthly retirement payments at the time of his death, there shall be paid to his estate, or to his widow, nine additional monthly payments.

(Prior code § 2901.53.)

## **Chapter 3.24 RETIREMENT SYSTEM SUBSEQUENT TO JULY 1, 1951**

### **Parts:**

- 1 General Provisions and Definitions
- 2 Administration
- 3 Employee Status and Contributions
- 4 Retirement Fund
- 5 Records and Reports
- 6 Membership
- 7 Member Contributions
- 8 Member Contributions after Effective Date
- 9 Procedure on Contributions
- 10 City Contributions
- 11 Service
- 12 Absences
- 13 Retirement
- 14 Benefits
- 15 Service Retirement Generally
- 16 Service Retirement for Certain Members on and after Effective Date
- 17 Disability Retirement Generally
- 18 Disability Retirement for Certain Members after Effective Date
- 19 Optional Settlements

- 20 Death
- 21 Special Benefits for Certain Former Health Department Employees
- 22 Special Benefits for Certain Former Communications Department Employees
- 23 Medical Benefits for Certain Retirees and Survivors
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**Part 1**  
**GENERAL PROVISIONS AND DEFINITIONS**

**Sections:**

- 3.24.010 Title for citation.
- 3.24.020 Continuance of federated employees' retirement system.
- 3.24.030 Prior retirement system superseded.
- 3.24.040 Purpose of chapter provisions.
- 3.24.050 Definitions.
- 3.24.060 Limited applicability of Chapter 3.24 on and after July 1, 1975.

**3.24.010 Title for citation.**

This Chapter 3.24 may be cited as the "San José retirement code."

(Prior code § 2904.1.)

**3.24.020 Continuance of federated employees' retirement system.**

The San José federated employees' retirement system created by Ordinance 2774, as amended, presently codified as Chapter 3.20 of the San José Municipal Code, is continued in existence under this chapter.

(Prior code § 2904.3.)

**3.24.030 Prior retirement system superseded.**

On and after July 1, 1951, and subject to the provisions of Section 3.24.450 and Section 3.24.1210 of this chapter, this chapter 3.24 shall supersede the provisions of Chapter 3.20 as to the employees who become members of the retirement system which is the subject of this chapter.

(Prior code § 2904.)

**3.24.040 Purpose of chapter provisions.**

The purpose of this chapter is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated, without hardship or prejudice, may be replaced by more capable employees, and to that end provide a retirement system consisting of retirement allowances and death benefits. It is the intent of the city council that the retirement provisions in this chapter be amended from time to time to include provisions that will improve the system. To this end it is intended that the reports of the board will be considered, along with other available data, as to the desirability of changes in the retirement system.

(Prior code § 2904.2.)

### **3.24.050 Definitions.**

Unless the context otherwise requires, the definitions set forth in Part 4 of Chapter 2.08 and this part of the code govern the construction of this chapter.

1. "Accumulated additional contributions" means the sum of all additional contributions standing to the credit of a member's individual account, and interest thereon.
2. "Accumulated normal contributions" means the sum of all normal contributions standing to the credit of a members individual account, and interest thereon.
3. "Accumulated prior service contributions" means the sum of all prior service contributions standing to the credit of a members individual account and interest thereon.
4. "Accumulated contributions" means accumulated normal contributions plus any accumulated additional contributions and plus accumulated prior service contributions standing to the credit of a member's account.
5. "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted and the interest rate fixed by the board.
6. "Actuary" means the actuary retained on a consulting basis by the board.
7. "Additional contributions" means contributions made by members in addition to their normal contributions.
8. "Annuity" means payments for life derived from contributions made by a member.
9. "Beneficiary" means any person, including a corporation, designated by a member to receive, or who qualifies for receipt of, a benefit payable under this chapter.
10. "Benefit" means the retirement allowance, death benefit, or refund of accumulated contributions.
11. "Board" means the retirement board created in Part 10 of Chapter 2.08 of this Code.
12. "City" means the City of San José.
13. "Compensation" means the remuneration paid in cash out of funds controlled by the city, plus the monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished a member by the city in payment for his services. Overtime excluded in computing compensation. When the compensation of a member is a factor in any computation to be made under this chapter, there shall be excluded from such computations any compensation based on overtime put in by a member.

14. "Compensation earnable" by a member means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay. The computation for any absence of a member shall be based on the compensation earnable by him at the beginning of the absence and that for time prior to entering city service shall be based on the compensation earnable by him in the position first held by him in such service.

15. "Employee" means any person in the employ of the city whose compensation, or at least that portion of his compensation which is provided by the city, is paid out of funds directly controlled by the city. "Funds directly controlled by the city" includes funds deposited in and disbursed from the city treasury in payment of compensation, regardless of their source.

16. "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years during his membership in the system. For the purposes of this chapter, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break, and compensation earnable during such time shall be included in computation of final compensation. If a break in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in computation of final compensation.

17. On and after September 1, 1953, to August 31, 1956, the "fiscal year," for the purpose of this chapter, is any year commencing on September 1st and ending on August 31st next following; provided, that the fiscal year commencing July 1, 1952 shall end on August 31, 1953. On and after July 1, 1957, the "fiscal year," for the purpose of this chapter, is any year commencing on July 1st and ending on June 30th next following; provided, however, that the fiscal year commencing September 1, 1956, shall be a ten-month fiscal year ending on June 30, 1957.

18. "Member" means any person included in the membership of this system.

19. "Normal contributions" means contributions made by a member at the normal rates of contribution fixed by the board, but does not include additional contributions by members.

20. "Pension" means payments for life derived from contributions made from employer controlled funds.

21. "Prior service contributions" means contributions made by members on account of service rendered prior to July 1, 1951.

22. "Regular interest" means interest at the annual rate fixed by the board, compounded annually, plus such additional interest as the board may credit from year to year.

23. "Retirement" means withdrawal from active service with a retirement allowance granted under this chapter.

24. "Retirement allowance" means the service retirement allowance or the disability allowance.

25. "Retirement fund" means the San José federated employees retirement fund created by Ordinance 2774, as amended, presently codified in Chapter 3.20 of the San José Municipal Code, and continued in existency by this chapter.

26. "Retirement system" or "this system" means the federated city employees retirement system.

(Prior code §§ 2904.4 - 2904.31.)

### **3.24.060 Limited applicability of Chapter 3.24 on and after July 1, 1975.**

Anything elsewhere in this Chapter 3.24 to the contrary notwithstanding, no person shall become, on or after July 1, 1975, a member of the retirement plan established by the provisions of this chapter, and, except as may be otherwise provided by the provisions of Chapter 3.28 of this Code, no member or former member of the retirement plan established by the provisions of this Chapter 3.24, and no survivor, beneficiary or estate of any such member or former member shall have any rights or be entitled to any benefits under the provisions of this Chapter 3.24 if and after said member or former member becomes a member of the 1975 federated employees retirement plan established by the provisions of Chapter 3.28 of this Code.

(Prior code § 2904.31a.)

## **Part 2 ADMINISTRATION**

### **Sections:**

- 3.24.100 Creation.
- 3.24.110 Powers and duties.
- 3.24.120 Determination of employee membership conditions.
- 3.24.130 Benefit determination authority.
- 3.24.140 Authority to secure medical service and advice.
- 3.24.150 Actuarial investigation requirements.
- 3.24.160 Adoption of tables and interest rates.
- 3.24.170 Interest credited on contributions - Generally.
- 3.24.180 Interest credited on contributions - Additional earnings.
- 3.24.190 Hearings.
- 3.24.200 Prohibited financial transactions.
- 3.24.210 Direct transfers of eligible rollover distributions.

### **3.24.100 Creation.**

For creation of the retirement board, see Chapter 2.08, Part 4 of this Code.

(Prior code § 2904.34.)

### **3.24.110 Powers and duties.**

The board may make such rules not inconsistent with this chapter as it deems proper, and each member and each person retired is subject to this chapter and such rules.

(Prior code § 2904.40.)

#### **3.24.120 Determination of employee membership conditions.**

The board shall determine, within the scope of this chapter, the employees who are entitled to membership in the retirement system described in this chapter, and the board is the sole judge of the conditions under which persons may be admitted to and may continue to receive benefits under this system.

(Prior code § 2904.42.)

#### **3.24.130 Benefit determination authority.**

Subject to this chapter and its rules, the board shall determine and may modify benefits for service and disability and death.

(Prior code § 2904.41.)

#### **3.24.140 Authority to secure medical service and advice.**

The board shall secure and pay reasonable compensation for such medical service and advice as is necessary to discharge its duties respecting matters involving disability or death or both.

(Prior code § 2904.43.)

#### **3.24.150 Actuarial investigation requirements.**

The board shall keep in convenient form such data as are necessary for the actuarial valuation of this system. The board shall cause an actuarial investigation to be made from time to time and as often as may be reasonably necessary to keep the plan actuarially sound, but not less frequently than once each five years commencing from and after January 1, 1971. The actuarial investigation shall consist of a report as to the mortality, service and compensation experience of members and persons receiving benefits, an actuarial valuation of the assets and liabilities of this system, and such other actuarial investigations as may be relevant to and for the benefit of the system.

From time to time the board shall determine the rate of interest being earned on the retirement fund.

(Prior code § 2904.44.)

#### **3.24.160 Adoption of tables and interest rates.**

Upon the basis of any or all of such investigation, valuation and determination, the board shall adopt such mortality, service and other tables and interest rates as it deems necessary and, subject to Sections 3.24.570, 3.24.580, 3.24.720 and 3.24.730 make revision in rates of contributions of members as it deems necessary to provide the benefits for which the rates for normal contributions are required to be calculated. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

(Prior code § 2904.45.)



### **3.24.170 Interest credited on contributions - Generally.**

The board shall credit all contributions of members, retired members and the city, in the retirement fund, with interest at the current rate, compounded at each June 30th and December 31st.

(Prior code § 2904.46.)

### **3.24.180 Interest credited on contributions - Additional earnings.**

As of June 30th, the board may credit to all contributions held in the retirement fund such interest in excess of the current rate as it deems proper in the light of the earnings on the retirement fund during the fiscal year, but not more than the difference between such earnings and the interest credited at the current rate to contributions during the fiscal year. In the calculation of benefits under any mortality table adopted by the board, only the current rate of interest is allowed on contributions under this chapter.

(Prior code § 2904.47.)

### **3.24.190 Hearings.**

A. The board may, in its discretion, hold a hearing for the purpose of determining any question presented to it involving any right, benefit or obligation of a person under this chapter. Any applicant may file an application for rehearing of any application, within thirty days after written notice of the determination by the retirement board has been sent by registered mail to the applicant or his attorney of record, upon any of the following grounds:

1. That the retirement board acted without and in excess of its powers;
2. That the order, decision or award was procured by fraud;
3. That the evidence does not justify the determination of the retirement board;
4. That the applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered or procured at the hearing.

B. The determination of the retirement board on any application for rehearing shall be made within sixty days after the filing thereof.

(Prior code § 2904.48.)

### **3.24.200 Prohibited financial transactions.**

A board member or employee of the board shall not, directly or indirectly:

- A. Have any interest in the making or any investment, or in the gains or profits accruing therefrom;
- B. For himself, or as an agent or partner of others, borrow any funds or deposits of this system, nor use such funds or deposits in any manner except to make such current and necessary payments as are authorized by the board;
- C. Become an endorser, surety or obligor on investments by the board.

(Prior code § 2904.33.)

**3.24.210 Direct transfers of eligible rollover distributions.**

A. If, under the provisions of this chapter, a person becomes entitled to an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.

B. The election made pursuant to this section shall be in accordance with terms and conditions established by the board.

C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.

D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code.

E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code.

(Ord. 24814.)

**Part 3**

**EMPLOYEE STATUS AND CONTRIBUTIONS**

**Sections:**

3.24.250 Employee status change - Secretary to notify board.

3.24.260 Employees to furnish data.

3.24.270 Determination of status questions.

3.24.280 Adjustment of contributions and payments.

**3.24.250 Employee status change - Secretary to notify board.**

The secretary shall give the board as it may require notice of the change in status of any member, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death, and other pertinent information.

(Prior code § 2904.49.)

**3.24.260 Employees to furnish data.**

Each employee shall file with the board such information affecting his status as a member as the board may require.

(Prior code § 2904.50.)

**3.24.270 Determination of status questions.**

If there is disagreement between any member and the board with respect to the length of service, compensation or age of any member, or if any member refuses or fails to give the board a statement of his city service, compensation or age, the board shall hold a hearing, and upon the basis of available testimony and available records, determine such length of service, compensation or age.

(Prior code § 2904.51.)

### **3.24.280 Adjustment of contributions and payments.**

If more or less than the correct amount of contribution required of members of the city is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the city and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Prior code § 2904.52.)

## **Part 4 RETIREMENT FUND**

### **Sections:**

- 3.24.300 Continuation of federated employees' retirement fund.
- 3.24.310 Control and administration.
- 3.24.320 Custodian of retirement fund - Payment.
- 3.24.330 Deposit of funds.
- 3.24.340 Earnings from funds.
- 3.24.350 Investment of funds - Conditions and restrictions.
- 3.24.355 Security loan agreements.
- 3.24.360 Investment of funds - Delegation of authority.
- 3.24.370 Investment counseling - Restrictions.
- 3.24.380 Redepositing of unclaimed payments.

### **3.24.300 Continuation of federated employees' retirement fund.**

The "San José federated employees' retirement fund," in the city treasury is continued in existence.

(Prior code § 2904.53.)

### **3.24.310 Control and administration.**

The board has exclusive control of the administration and investment of the retirement fund.

(Prior code § 2904.54.)

### **3.24.320 Custodian of retirement fund - Payment.**

A. Except as provided in subsection B., the city director of finance is the sole custodian of the retirement fund, subject to the exclusive control of the board as to administration and investment. All payments from the fund shall be made in the manner required for the disbursement of other public funds, but only upon authorization of the board.

B. The board may enter into contractual arrangements with California banks or with national banking associations to provide master custody services with respect to the assets of the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Prior code § 2904.55; Ord. 25092.)

### **3.24.330 Deposit of funds.**

The board shall deposit, to the credit of the retirement fund, all amounts received by it under this chapter in the city treasury or in such custodial accounts as are established with the custodian bank.

(Prior code § 2904.57; Ord. 25092.)

### **3.24.340 Earnings from funds.**

Interest earned on any cash deposit in a fund by the treasurer and income on other assets constituting a part of the fund shall be credited to the fund as received. Income of whatever nature earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies. The board, however, may apply to reduce the book value of securities purchased, or all or part of the excess of the proceeds of the sale of securities over the book value of the securities sold:

A. If the purchase of securities is made with those proceeds; and

B. If the terms of both securities from the date of sale or purchase, as the case may be, to the respective dates of maturity do not differ by more than three years.

(Prior code § 2904.56.)

### **3.24.350 Investment of funds - Conditions and restrictions.**

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the system.

B. The board shall discharge its duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, members of the system and their beneficiaries, minimizing city and member contributions to the retirement fund, and defraying reasonable expenses of administering the system. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

D. The board shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

(Prior code § 2904.58; Ords. 19988, 21144, 21606, 22509, 23559, 25092.)

### **3.24.355 Security loan agreements.**

A. The retirement board may enter into contractual arrangements with broker-dealers and with banks for such broker-dealers or banks to provide security lending services pursuant to security loan agreements on such conditions, consistent with this section, as the board may determine.

B. For the purposes of this section, "security loan agreement" and "marketable securities" shall be defined as follows:

1. "Security loan agreement" means a written contract whereby a legal owner, the lender, agrees to lend specific marketable corporate or government securities for a period not to exceed one year. The lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled. The lender waives the right to vote the securities during the term of the loan.

2. "Marketable securities" means securities that are freely traded on recognized exchanges or market places.

C. Any contractual arrangements entered into pursuant to this section shall require all of the following:

1. The lender may terminate the security loan agreement upon not more than five business days' notice as agreed and the borrower may terminate the security loan agreement upon not less than two business days' notice as agreed.

2. The borrower shall provide collateral to the lender in a form approved by the board, and shall be in an amount equal to at least one hundred two percent of the market value of the loaned securities as agreed.

3. Daily monitoring of the market value of the loaned securities.

4. Payment by the borrower of additional collateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upon ratios; but in no event shall the amount of the collateral be less than the market value of the loaned securities.

5. Maintenance of detailed records of all security loans.

6. Development of controls and reports to monitor the conduct of the transactions.

7. Publication of the net results of the security loan transactions separate from the results of other investment activities.

(Ords. 21865, 24690.)

### **3.24.360 Investment of funds - Delegation of authority.**

Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.24.350, the board may adopt an investment resolution or resolutions containing detailed guidelines, consistent with Section 3.24.350. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.24.370, provided that such officer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution or resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported monthly to the board by the person or persons to whom the board has delegated such authority.

(Prior code § 2904.59; Ords. 20116, 21077, 21304, 23559, 25092.)

### **3.24.370 Investment counseling - Restrictions.**

A. The board may enter into contractual arrangements with any person or persons or association or associations, who meet the requirements of subsection B. or C., to provide counsel to the board with respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.

B. Any person or association who provides services to the board with regard to financial securities:

1. Shall be a person or association whose principal business consists of investment counseling services; and

2. Shall be registered as an investment adviser under such laws as may require such registration.

C. With respect to real estate advisors, the board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking, or property management, and which are duly licensed to perform real estate advisor services in the jurisdiction where the real property is located.

(Prior code § 2904.60a; Ords. 25092, 25641.)

### **3.24.380 Redepositing of unclaimed payments.**

Notwithstanding any provision in this chapter or any other ordinance to the contrary, whenever any check drawn against the retirement fund in payment of accumulated contributions or benefits remains unclaimed, or the claimant cannot be found, the proceeds of such check shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and such redeposit shall not operate to reinstate the membership of the claimant in this system. If such proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the accumulated contributions of the city, held in the retirement fund to meet the liabilities of the city on account of current services. The board may at any time after reversion of proceeds to the city, and upon receipt of proper information satisfactory to it, return such proceeds so held for the city to the credit of the claimant, to be administered in the manner provided under this system.

(Prior code § 2904.60; Ord. 25092.)

## **Part 5 RECORDS AND REPORTS**

### **Sections:**

- 3.24.400 Records and accounts - Information required.
- 3.24.410 Financial statements.
- 3.24.420 Annual reports.

### **3.24.400 Records and accounts - Information required.**

In addition to other records and accounts, the board shall keep such records and accounts as may be necessary to show at any time:

- A. The total accumulated contributions of members;
- B. The total accumulated contributions of retired members less the annuity payments made to such members;
- C. The accumulated contributions of the city held for the benefit of members on account of current service;
- D. All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of benefits that have been granted to retired employees and on account of prior service of members.

(Prior code § 2904.61.)

### **3.24.410 Financial statements.**

The board shall cause to be issued, as of the date of the investigation and valuation made pursuant to Section 3.24.160, a financial statement showing an actuarial valuation of the assets and liabilities of this system and a statement as to the accumulated cash and securities in the retirement fund as certified by the auditor. The board shall include in the statement, which shall be issued as of the end of each fiscal year, other than the year of the investigation, assets and liabilities resulting from current and prior service, in amounts equal only to accumulated contributions held on account of such service.

(Prior code § 2904.62.)

### **3.24.420 Annual reports.**

As soon as practicable after the close of each fiscal year, the board shall file with the city council a report of its work for such fiscal year, and the board shall make the report available to any member who requests it. Among other things, the report shall contain recommendations for or against changes in the retirement system.

(Prior code § 2904.63.)

## **Part 6 MEMBERSHIP**

### **EXHIBIT B**

Sections:

- 3.24.450 Continuance of membership.
- 3.24.460 Conditions of membership.
- 3.24.470 Exclusions from membership - Generally.
- 3.24.480 Part-time employees excluded with exceptions.
- 3.24.490 City manager excluded - City auditor excluded with exceptions.
- 3.24.500 Termination of membership.
- 3.24.510 Election to allow accumulated contributions to remain in fund - Procedures.

**3.24.450 Continuance of membership.**

All members of the retirement system immediately prior to the time this chapter became operative continue to be members of this system.

(Prior code § 2904.64.)

**3.24.460 Conditions of membership.**

Every other employee who is not excluded by the following sections becomes a member of the retirement system upon entry or reentry into city service.

(Prior code § 2904.65.)

**3.24.470 Exclusions from membership - Generally.**

A. The following persons are hereby excluded from membership in this system:

1. The mayor and each member of the city council;
2. Each member of a city board or commission who holds no other city office or position of employment which qualifies him for membership in this system;
3. Persons temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional character;
4. Persons employed pursuant to the provisions of subparagraph (5) of subsection (a) of Section 1101 of the Charter of the city in the event of an emergency to perform services required because of and during such emergency;
5. Each volunteer member of any police, fire or civil defense force or organization who holds no other city office or position of employment which qualifies him for membership in this system;
6. Persons employed or whose services are contracted for pursuant to any transfer,



consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;

7. Persons employed pursuant to Section 1110 of the Charter of the city;

8. Each person employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis, unless he is a member by virtue of the provisions of Section 3.24.480;

9. Persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons;

10. Persons who are members of any police, fire or other retirement or pension system, other than this system or the Federal Social Security System or any other federal retirement system supported in whole or in part by funds of the United States, any state government or political subdivision thereof, the city or any other municipal corporation, who are receiving or are entitled to credit in such other system for service rendered to the city; provided, however, that nothing contained in this subdivision 10 shall be deemed to prohibit any such person from becoming a member of this retirement system after he has ceased being a member of the abovementioned police, fire or other retirement or pension system if he should thereafter otherwise qualify for membership.

B. For purposes of this section, persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, on account of service rendered to an employer other than the city while they were not in the service of the city are not, because of such receipt, members of any other retirement or pension system.

(Prior code § 2904.66.)

#### **3.24.480 Part-time employees excluded with exceptions.**

An employee serving on a part-time basis is excluded from this system unless:

A. He becomes a member prior to the time this chapter becomes effective and continues to be a member by reason of Section 3.24.450;

B. His employment is regular and continuous and in the opinion of the board will extend for more than one year, and requires service for at least one-half the time of employees serving on a full-time basis; or

C. Unless he is a member at the time he commences to serve on a part-time basis.

(Prior code § 2904.68.)

#### **3.24.490 City manager excluded - City auditor excluded with exceptions.**

A. The city manager is excluded from membership in this system.

B. 1. The city auditor is excluded from membership in this system unless he files or has already filed with the board an election in writing to become a member. He may make such election at any time during his employment by the city.

2. If he elects to become a member, he shall make contributions to this system in the amount which he would have contributed had he not been so excluded, plus interest which would have been credited on such contributions. If he affirmatively exercises the option:

a. He shall receive credit for prior service, from the date of his first exclusion, in the same

manner as if he had not been excluded; and

b. The contributions of the city because of his membership shall be the same as they would have been had he not been excluded; and

c. His rate of contribution shall be based on the nearest age at the time he first was excluded.

(Prior code § 2904.69.)

### **3.24.500 Termination of membership.**

A person ceases to be a member:

A. Upon retirement;

B. If he is credited with less than twenty years of city service, or with less than five hundred dollars in accumulated contributions, or with a greater amount and has not elected to allow it to remain in the retirement fund, and renders less than five years of service in any period of ten consecutive years.

C. If he is paid more than one-fourth of his normal contributions. For the purpose of this subsection C., deposit in the United States mail of a warrant drawn in favor of a member, addressed to the latest address of the member on file in the office of this system, constitutes payment to the member of the amounts for which the warrant is drawn.

(Prior code § 2904.70.)

### **3.24.510 Election to allow accumulated contributions to remain in fund - Procedures.**

A. Any other provisions in this chapter to the contrary notwithstanding, if the city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the board to have resulted in permanent discontinuance (and in such case, as of the date of the determination by the board that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance, but the member does not reenter city service, and the amount of his accumulated contributions standing to his credit at that time is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of said right is mailed by this system to the member's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the retirement fund. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to be credited with twenty years of service. An election to allow all or part of one's accumulated contribution to remain in the retirement fund may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn. Upon withdrawal of any accumulated contributions, the member withdrawing the same shall lose, and shall not be entitled to, any credit for any service on account of which such withdrawn contributions has theretofore been paid into the retirement fund. In determining the service for which a member is no longer entitled to credit upon withdrawal of all or part of his contributions, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest service rendered by the member to the city, or on account of his earliest service if so requested by the member at the time he withdraws such contributions.

B. A member may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for service during such periods of time as may be designated by him, without withdrawing any contributions paid by him because of such service, provided he retains credit for not less than five years of continuous service; and in such event, in determining his eligibility for or the amount of any benefits to which he may become entitled, he shall be given no credit for any service so relinquished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 of this Code.

C. A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement but he is not subject to a minimum service requirement.

After the qualification of such member for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and service standing to his credit at the time of retirement and on the employer contributions held for him and calculated in the same manner as for other members, except that the provisions in this chapter for minimum service and disability retirement allowances do not apply to him unless he meets such minimum service requirements. Upon the death of such a member prior to retirement under this section, such death benefits as may be payable under Section 3.24.2000 of this chapter shall be computed upon the basis of his average annual compensation earnable for the year preceding the date of termination of the service for which he is entitled to credit, multiplied by the years of city service prior to such termination not to exceed six.

(Prior code § 2904.71.)

## **Part 7 MEMBER CONTRIBUTIONS**

### **Sections:**

- 3.24.550 Normal rate of monthly contributions.
- 3.24.560 Applicability limitation.
- 3.24.570 Normal contributions - Rate.
- 3.24.580 Normal contributions - Initial rate.
- 3.24.590 Additional contributions.
- 3.24.600 Annuity to be actuarial equivalent of accumulated contributions.
- 3.24.610 Return of contributions - Conditions.
- 3.24.620 Return of contributions - Payment.
- 3.24.630 Contributions upon reentry into system.
- 3.24.640 Board may withhold accumulated normal contributions.
- 3.24.650 Redeposit of withdrawn contributions.

3.24.660 Normal rate of contributions following redeposit.

3.24.670 Effect of reentering system without redepositing.

**3.24.550 Normal rate of monthly contributions.**

All members of the system shall be required to make normal monthly contributions to the system. The normal monthly contribution which shall be required of a member for each month from and after July 1, 1971, shall be a percentage of the compensation earned by him in such month. Said percentage, for normal contribution purposes, shall be the same for all members, regardless of their age or sex. Said percentage is hereinafter referred to as the member's "normal rate of monthly contribution."

(Prior code § 2904.72.)

**3.24.560 Applicability limitation.**

On and after the effective date of this section, the provisions of this Part 7 shall no longer apply to any person to whom the provisions of Part 8 of Chapter 3.24 thereafter B. apply.

(Prior code § 2904.83a.)

**3.24.570 Normal contributions - Rate.**

The normal rate of monthly contribution required of a member on or after July 1, 1971, or on or after the date he enters the system if he enters after July 1, 1971, shall be such that the amount of normal monthly contributions paid by him, when added to all normal monthly contributions paid by other members of the system for the same period, will be sufficient to pay 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered by members on and after July 1, 1971; provided and excepting, however, that whenever a normal rate of monthly contribution for members is adopted or from time to time amended, the new or amended rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions therefore actually required of members and any greater or lesser amount which, because of amendments to the system changing the time at which members may retire, or changing the benefits members will receive, or as a result of experience under the system, said members would have theretofore been required to pay in order to make their normal contributions equal to 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered prior to the effective date of the new or amended rate.

(Prior code § 2904.73.)

**3.24.580 Normal contributions - Initial rate.**

A. Until amended or revised by the board in accordance with Section 3.24.170, the normal rate of monthly contribution required of members on and after July 1, 1971, shall be three and eighty-five one-hundredths percent of earned compensation.

B. The normal rate of monthly contribution set forth in this section is based on the interest and mortality tables used by this retirement system on July 1, 1971, and subject to other provisions of this part, shall be adjusted by the board from time to time, in accordance with the provisions of Section 3.24.170.

(Prior code § 2904.73a.)

**3.24.590 Additional contributions.**

Subject to rules prescribed by the board, any member may elect to make contributions in excess of his normal contributions for the purpose of providing additional benefits. The exercise of this privilege by a member does not require the city to make any additional contributions. Upon application, the board shall furnish information concerning the nature and amount of additional benefits to be obtained from additional contributions.

(Prior code § 2904.77.)

**3.24.600 Annuity to be actuarial equivalent of accumulated contributions.**

The actual amount of annuity receivable by a member upon retirement shall be the actuarial equivalent of his accumulated contributions.

(Prior code § 2904.76.)

**3.24.610 Return of contributions - Conditions.**

A member who, because of his employment by the city, is required to become a member of any other retirement system supported in whole or in part by public funds shall, with respect to his right to withdraw his accumulated contributions, be considered as permanently separated from city service.

(Prior code § 2904.78.)

**3.24.620 Return of contributions - Payment.**

If the city service or membership herein of a member is discontinued, except by death on account of which a death benefit is payable or by retirement, he shall, six months after date of discontinuance, termination or resignation, be paid such part of his accumulated contributions as he demands, except that if he is credited with less than five hundred dollars in accumulated contributions, or with a greater amount, and has not elected to allow it to remain in the retirement fund and, in the opinion of the board, is permanently separated from city service by reason of such discontinuance, he shall be paid forthwith all of his accumulated contributions.

(Prior code 3.24.660 § 2904.79.)

**3.24.630 Contributions upon reentry into system.**

Upon a member's reentry into the retirement system on and after July 1, 1971, at reinstatement from service or disability retirement, his normal rate of monthly contribution shall be the same as that of other members.

(Prior code § 2904.74.)

**3.24.640 Board may withhold accumulated normal contributions.**

The board may withhold, for not more than one year after a member last rendered city service, all or part of his accumulated normal contributions if after a previous discontinuance of city service he withdrew all or a part of his accumulated normal contributions and failed to redeposit such withdrawn

amount in the retirement fund.

(Prior code § 2904.80.)

### **3.24.650    Redeposit of withdrawn contributions.**

A member may redeposit in the retirement fund, in one sum or in not to exceed thirty-six monthly or seventy-two semimonthly payments:

A. An amount equal to the accumulated contributions that he has withdrawn at one or more terminations of service, but in reverse chronological order in which they occurred, and subject to minimum payments fixed by the board; and

B. An amount equal to additional interest which would have been credited to his account at the date of the election, had such contributions not been withdrawn; and

C. If he elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of such election, at the rate of interest currently being used from time to time under the system.

(Prior code § 2904.81.)

### **3.24.660    Normal rate of contributions following redeposit.**

If upon a member's reentry into the system on or after July 1, 1971, he redeposits his accumulated contributions, his membership is the same as if it were unbroken by such termination. His normal rate of monthly contribution for future years shall be the same as that of other members.

(Prior code § 2904.82.)

### **3.24.670    Effect of reentering system without redepositing.**

Upon reentering this system on or after July 1, 1971, after a termination of his membership, if a member fails to elect within not more than thirty days after the date upon which notice of the right to redeposit is mailed by this system to the member's latest address on file in the office of this system, to make, or having so elected, subsequently does not make such redeposit, he reenters as a new member without credit for any service except the service rendered before he first became a member, credited to him before termination, and his normal rate of monthly contribution for future years is the same as that of other members.

(Prior code § 2904.83.)

## **Part 8**

### **MEMBER CONTRIBUTIONS AFTER EFFECTIVE DATE**

Sections:

3.24.700    Applicability of Part 8 provisions.

3.24.710    Normal rate of monthly contributions.

3.24.720    Normal contributions - Initial rate.

- 3.24.730 Normal contributions - Rate.
- 3.24.740 Additional contributions.
- 3.24.750 Contributions on reentry into the system.
- 3.24.760 Annuity to be actuarial equivalent of accumulated contributions.
- 3.24.770 Return of contributions on joining other system.
- 3.24.780 When board may withhold accumulated normal contributions.
- 3.24.790 Redeposit of withdrawn contributions.
- 3.24.800 Normal rate of contributions following redeposit.
- 3.24.810 Effect of reentering system without redepositing.

**3.24.700 Applicability of Part 8 provisions.**

A. The provisions of this part shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system, and to contributions required of them after the effective date of this part, as follows:

1. All persons who become members of the retirement system on or after the effective date of this part, excepting persons who on the effective date of this part are on service retirement or disability retirement under this system who may subsequently be reinstated from such retirement;
2. Each person who became a member of the retirement system prior to the effective date of this part and is such a member on said effective date if such person is given the option specified in Section 3.24.1560, and exercises such option in the manner and within the time specified in Section 3.24.1570;

B. Any person who became a member of the retirement system prior to the effective date of this Part 8, and such member's contributions, shall continue to be governed by the provisions of Part 7 of this chapter and not by the provisions of this Part 8, if he is not given the option specified in Section 3.24.1560, or if he is given such option but refuses or fails to exercise the same in the manner and within the time specified in Section 3.24.1570.

(Prior code § 2904.83h.)

**3.24.710 Normal rate of monthly contributions.**

All members of the system to whom this Part 8 applies shall be required to make normal monthly contributions to the system. The normal monthly contribution which shall be required of a member for each month from and after July 1, 1971, shall be a percentage of the compensation earned by him in such month. Said percentage is hereinafter referred to as the member's "normal rate of monthly contribution."

(Prior code § 2904.83i.)

**3.24.720 Normal contributions - Initial rate.**

A. Until amended or revised by the board in accordance with Section 3.24.160, the normal rate of monthly contribution required of members on and after July 1, 1971 shall be three and eight-five one-hundredths percent of earned compensation.

B. The normal rate of monthly contribution set forth in this section is based on the interest and mortality tables used by this retirement system on July 1, 1971, and, subject to other provisions of this part, shall be adjusted by the board from time to time, in accordance with the provisions of Section 3.24.160 of this Code.

(Prior code § 2904.83k.)

### **3.24.730 Normal contributions - Rate.**

For each member of the system to whom the provisions of this part apply, the normal rate of monthly contribution required on or 3.24.750 after July 1, 1971, or on or after the date he enters the system if he enters after July 1, 1971, shall be such that the amount of normal monthly contribution paid by him when added to all normal monthly contributions paid by other members of the system for the same period, will be sufficient to pay 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered by members on and after July 1, 1971; provided and excepting, however, that whenever a normal rate of monthly contribution for members is adopted or from time to time amended, the new or amended rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions theretofore actually required of members and any greater or lesser amount which, because of amendments to the system changing the time at which members may retire, or changing the benefits members will receive, or as a result of experience under the system, said members would have theretofore been required to pay in order to make their normal contributions equal 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered prior to the effective date of the new or amended rate.

(Prior code § 2904.83j.)

### **3.24.740 Additional contributions.**

Subject to rules prescribed by the board, any member may elect to make contributions for the purpose of providing additional benefits. The exercise of this privilege by a member does not require the city to make any additional contributions. Upon application, the board shall furnish information concerning the nature and amount of additional benefits to be obtained from additional contributions.

(Prior code § 2904.83o.)

### **3.24.750 Contributions on reentry into the system.**

Upon a member's reentry on or after July 1, 1971, into the retirement system at reinstatement from service or disability retirement, his normal rate of monthly contribution shall be the same as that of other members.

(Prior code § 2904.831.)

### **3.24.760 Annuity to be actuarial equivalent of accumulated contributions.**

The actual amount of annuity receivable by a member upon retirement shall be the actuarial equivalent of his accumulated contributions.



(Prior code § 2904.38n.)

**3.24.770 Return of contributions on joining other system.**

A member who, because of his employment by the city is required to become a member of any other retirement system supported in whole or in part by public funds, shall, with respect to his right to withdraw his accumulated contributions, be considered as permanently separated from city service.

(Prior code § 2904.83p.)

**3.24.780 When board may withhold accumulated normal contributions.**

Anything in Section 3.24.510 to the contrary notwithstanding, the board may withhold, for not more than one year after a member last rendered city service, all or part of his accumulated normal contributions if after a previous discontinuance of city service he withdrew all or part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund.

(Prior code § 2904.83q.)

**3.24.790 Redeposit of withdrawn contributions.**

A member to whom this part applies may redeposit in the retirement fund, in one sum or in not to exceed thirty-six monthly or seventy-two semimonthly payments:

- A. An amount equal to the accumulated contributions that he has withdrawn at one or more terminations of service, but in reverse chronological order in which they occurred, and subject to minimum payments fixed by the board; and
- B. An amount equal to additional interest which would have been credited to his account at the date of the election, had such contribution not been withdrawn; and
- C. If he elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of such election, at the rate of interest currently being used from time to time under the system.

(Prior code § 2904.83r.)

**3.24.800 Normal rate of contributions following redeposit.**

If, upon a member's reentry into the system on or after July 1, 1971, a member redeposits his accumulated normal contributions, his membership is the same as if it were unbroken by such termination. His normal rate of monthly contribution for future years shall be the same as that of other members.

(Prior code § 2904.83s.)

**3.24.810 Effect of reentering system without redepositing.**

Upon reentering this system on or after July 1, 1971, after a termination of his membership, if a member fails to elect within not more than thirty days after the date upon which notice of the right to redeposit is mailed by this system to the member's latest address on file in the office of this system to make, or having so elected, subsequently does not make such redeposit, he reenters as a new member

without credit for any service except service rendered before July 1, 1951, credit to him before termination, and his normal rate of monthly contribution for future years is the same as that of other members.

(Prior code § 2904.83t.)

## **Part 9 PROCEDURE ON CONTRIBUTIONS**

### **Sections:**

- 3.24.850 Board to certify contribution rates to auditor.
- 3.24.860 Contributions to be credited to individual accounts.
- 3.24.865 City pick up of member contributions.
- 3.24.870 Effect of death benefit upon contributions.

### **3.24.850 Board to certify contribution rates to auditor.**

The board shall certify to the city auditor the normal and additional rates of contributions for each member employed therein.

(Prior code § 2904.84.)

### **3.24.860 Contributions to be credited to individual accounts.**

Each member's contribution deducted and remitted or otherwise paid to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution is in full discharge of all claims and demands whatsoever for the service rendered by the members during the period covered by such payment, except the benefits afforded by this chapter.

(Prior code § 2904.86.)

### **3.24.865 City pick up of member contributions.**

A. For the purposes of this section, contributions "picked up" by the city means contributions to this system which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)).

B. Notwithstanding any other provision of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of this system. Nothing herein shall be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city.

C. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pick up by the city of all or a portion of the contributions required to be paid by a member of this system, as authorized by this section.

(Ord. 22458.)

### **3.24.870 Effect of death benefit upon contributions.**

If a death benefit has become or becomes payable before the payment of the total amount the member elected to pay under any election with respect to normal contributions permitted under this chapter, the member's entire compensation, or the service upon which that total amount was based, as the case may be, shall be included in the computation of the portion of the death benefit which is provided in subsection B. of Section 3.24.2010, and the unpaid balance of the total amount shall not be paid to this system, nor shall it be included in the member's accumulated contributions which constitute a part of the basic death benefit. Any balance of any such total amount remaining unpaid at the retirement of a member for either service or disability shall become due and payable forthwith, and if not paid, shall be deducted from the benefit otherwise payable.

(Prior code § 2904.87.)

## **Part 10 CITY CONTRIBUTIONS**

### **Sections:**

- 3.24.900 Administrative costs of system.
- 3.24.910 Current service contributions - Designated.
- 3.24.920 Current service contributions - Rate.
- 3.24.930 Prior service contributions - Designated.
- 3.24.940 Prior service contributions - Rate.
- 3.24.950 Contributions for members entitled to credit for service formerly credited to them under police and fire department retirement plan.
- 3.24.960 Contributions for members entitled to credit under Section 3.24.1090 for service formerly credited to them under police and fire department retirement plan.
- 3.24.980 No credit to city upon withdrawal of member's accumulated contributions.

### **3.24.900 Administrative costs of system.**

All administrative costs of the retirement system, as determined and approved by the board, including staff salaries and indirect labor costs, shall be borne by and paid from the retirement fund. The payment of costs of staff salaries and indirect labor from the retirement fund shall be subject to such limitations on said costs as may be agreed upon by the city and the employee organizations representing members of this system and set forth in the appropriate memoranda of agreement. Costs

for staff salaries and indirect labor in excess of said limitations, if any, shall be paid by the city.

(Prior code § 2904.90; Ord. 23433.)

### **3.24.910 Current service contributions - Designated.**

From and after July 1, 1971, the city's current service rate of contributions shall consist of the sum of two rates. The first rate, hereinafter referred to as the "normal city current service rate," shall be such that the amount of contributions paid by the city under such rate for each month of current service for which such rate is imposed, as compared to the amount of normal contributions required of members for each such month of current service, shall be in the ratio of eight for the city to three for members. The second rate, hereinafter referred to as the "city current service deficiency rate," shall be such as may be necessary to make up, over a period of thirty years, any existing deficiency in the amounts of normal current service contributions theretofore contributed by members and by the city for the payment of the cost of all pensions and other benefits which are or will become payable to members on account of current service, such deficiencies being those resulting from amendments to the system changing the time at which members, may retire, or changing the benefits members will receive, or resulting from experience under the system. From and after July 1, 1971) and until the amount accumulated in the retirement fund from normal contributions of members and from city current service contributions becomes not less than the present value of all amounts thereafter payable from the retirement fund on account of current service, the city shall make monthly contributions, for the purpose of making up said deficiencies in current service contributions, at a "current service deficiency rate" established by or pursuant to the provisions of this Part 10.

(Prior code § 2904.88.)

### **3.24.920 Current service contributions - Rate.**

From and after July 1, 1971, and until revised by the retirement board, the rate at which the city shall make contributions in each month for pensions and other benefits allowable under this retirement system to members on account of current service shall be 11.04 percent (said rate being the sum of a "normal city current service rate" of 10.30 percent, and a "city current service deficiency rate" of 0.74 percent) of the aggregate amount of members' compensation earned (or of members' compensation earnable with respect to members absent on military service, as defined in Section 3.24.1100, who are themselves contributing pursuant to Section 3.24.1110, or for whom contributions are made by the city pursuant to Section 3.24.1150, or with respect to members absent by reason of service-connected injury or illness as defined in Section 3.24.1170 if such members are themselves contributing pursuant to Sections 3.24.1170 and 3.24.1180 on the basis of compensation earnable) during the immediately preceding calendar month. Said composite rate of eleven and four one-hundredths percent, and/or the "normal city current service rate," and the "city current service deficiency rate" of which it is composed, may be revised by the retirement board from time to time because of or on the basis of such actuarial or other investigations as it may make pursuant to the provisions of Section 3.24.160 of this Code, or because of or on the basis of experience in this system, or because of or on the basis of such tables and rates as the board may adopt in accordance with the provisions of Section 3.24.170 of this Code.

(Prior code § 2904.89a.)

### **3.24.930 Prior service contributions - Designated.**

There shall be paid into the retirement fund, by contributions of the city, the amounts necessary to pay all pensions and all other benefits allowable under the retirement system to members on account of prior service, and not provided by member's accumulated prior service contributions. Until the amount

accumulated in the retirement fund from contributions of the city made because of prior service becomes not less than the present value of all amounts thereafter payable from the retirement fund on account of prior service and not provided by members' accumulated prior service contributions, the amount due in each fiscal year to said fund under this section shall be the amount determined from time to time by the retirement board, as required to liquidate the difference between said present value and the funds then on hand to meet such obligations on account of prior service, by annual installments from the time of such determination to a date forty years after the first day of July, 1951. Prorate installments may be paid for the fiscal years in which the forty years begin and end. During each fiscal year the board shall certify to the city auditor the amount due within such year to the retirement fund under this section on account of prior service, and the city auditor shall transfer such an amount to the retirement system from the budget appropriation for the then current fiscal year.

(Prior code § 2904.89.)

### **3.24.940 Prior service contributions - Rate.**

From and after July 1, 1971, and until revised by the retirement board, the rate at which the city shall make annual contributions for pensions and other benefits allowable under this retirement system to members on account of prior service shall be sixty-four one-hundredths percent of the aggregate amount of members' compensation earned (or of members' compensation earnable with respect to members absent on military service, as defined in Section 3.24.1100 who are themselves contributing pursuant to Section 3.24.1110, or for whom contributions are made pursuant to Section 3.24.1150, or with respect to members absent by reason of service-connected injury or illness, as defined in Section 3.24.1170, if such members are themselves contributing pursuant to Sections 3.24.1170 and 3.24.1180 on the basis of compensation earnable) during the immediately preceding fiscal year. Said rate may be revised or changed by the retirement board from time to time because of or on the basis of such actuarial or other investigations as it may make pursuant to Section 3.24.160 of this Code, or because of or on the basis of experience in this system, or because of or on the basis of such tables and rates as the board may adopt in accordance with the provisions of Section 3.24.170 of this Code.

(Prior code § 2904.89b.)

### **3.24.950 Contributions for members entitled to credit for service formerly credited to them under police and fire department retirement plan.**

A. If a member, pursuant to Section 3.24.1080, elects to and becomes entitled to receive credit under this system for service formerly credited to him under a city police or fire department retirement plan specified in Section 3.24.1080, the city shall contribute to the retirement fund an amount equal to the sum of:

1. An amount which, when added to the sums transferred and paid into the retirement fund established by this chapter pursuant to Section 3.24.1080, will equal the amount of contributions which such member would have been required to pay under this system had he been a member of this system from the date he became a member of the police and fire department retirement plan;
2. An amount equal to the contributions which the city would have been required to make to the retirement fund, during the time said member was a member of the police and fire department retirement plan, if said member had then been a member of this system instead of said police and fire department retirement plan.

B. Contributions required to be made by the city pursuant to this section shall be made by transfer and payment into the retirement fund established by this chapter, from the retirement fund established by said police and fire department retirement fund, of all contributions made by the city into such police

or fire department retirement fund for or because of such person's membership in the police and fire retirement plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other available city funds.

(Prior code § 2904.89c.)

**3.24.960 Contributions for members entitled to credit under Section 3.24.1090 for service formerly credited to them under police and fire department retirement plan.**

A. If a member, pursuant to Section 3.24.1090, elects to and becomes entitled to receive credit under this system for service formerly credited to him under a city police or fire department retirement plan specified in Section 3.24.1090, the city shall contribute to the retirement fund a amount equal to the sum of:

1. An amount equal to the contributions which the city would have been required to make to the retirement fund, during the time said member was a member of the police and fire department retirement plan, if said member had been a member of this system instead of said police and fire department retirement plan.

B. Contributions required to be made by the city pursuant to this section shall be made by the transfer and payment into the retirement fund established by this chapter from the retirement fund established by said police and fire department retirement plan, of all contributions made by the city into such police and fire department retirement fund for or because of such person's membership in the police and fire department retirement plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other available city funds.

(Prior code § 2904.89f.)

**3.24.980 No credit to city upon withdrawal of member's accumulated contributions.**

If the city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the board to have resulted in permanent discontinuance (and in such case, as of the date of the determination by the board that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance, but the member does not reenter city service, and such member withdraws all or part of his accumulated contributions, and interest thereon, the city shall not receive a refund of its contributions made for such member nor receive a credit for such contributions against other contributions required to be made by the city.

(Prior code § 2904.89(d); Ord. 20276.)

**Part 11  
SERVICE**

**Sections:**

3.24.1000 Definitions.

3.24.1010 Exclusions from definition of city service.

3.24.1020 Credit for prior service.

- 3.24.1030 Computation - Procedure generally.
- 3.24.1040 Computation - Certain time periods excluded.
- 3.24.1050 Computation - Part-time service - Hours.
- 3.24.1060 Part-time service - Compensation earnable.
- 3.24.1070 Part-time service - Credit for time worked.
- 3.24.1080 Service for which member was formerly entitled to credit under police and fire department retirement plan in Chapters 3.32 or 3.36.
- 3.24.1090 Service for which member was formerly entitled to credit under police and fire department retirement plan on or after February 1, 1962.

### **3.24.1000 Definitions.**

Unless the context otherwise requires, the definitions set forth in the following subsections govern the construction of this chapter.

A. "City service." Subject to such exclusions or exceptions as are provided for by subsection C. of this section, or by other provisions of this Chapter 3.24, "city service," as used in this chapter means and includes:

1. Service rendered as an officer or employee of the city for the city, for compensation, and only while he is receiving compensation from the city therefor;
2. Military service if and to the extent that a member is entitled to credit therefor under and by virtue of other provisions of this chapter;
3. Service rendered as an employee of the former city of Willow Glen (which city was consolidated with the City of San José in 1936), for compensation, and only while he was receiving compensation from said former city of Willow Glen therefor; provided, however, that no person who has been retired prior to the first day of January, 1964, pursuant to the provisions of this chapter shall receive any increased retirement allowance by reason of such service, for any time that he was on retirement prior to said first day of January, 1964, but such increased retirement allowance, if payable for such reason, shall be payable only from and after the said first day of January, 1964.

B. "Continuous service," as applied to "prior service," means all prior service regardless of interruptions and, as applied to "current service" means employment in city service uninterrupted by a continuous absence of more than three years. The period for which a member receives credit for service under Section 3.24.050 subsection 21 while absent on military service shall be excluded in calculating such continuous absence.

C. "Current service" means all city service rendered by a member after June 30, 1951.

D. "Prior service" means all city service rendered by a member prior to July 1, 1951.

(Prior code §§ 2904.91, 2904.92, 2904.93, 2904.94, 2904.95.)

### **3.24.1010 Exclusions from definition of city service.**

"City service," as used in this Chapter 3.24 does not mean, and shall not be deemed to include, any of the following service:

- A. Service rendered as mayor or as a member of the city council;
- B. Service rendered as a member of any city board or commission unless the person rendering such service is otherwise employed by the city in an office or position which qualifies him for membership in this system and he is required by virtue of his said office or position to render such service as a member of a city board or commission;
- C. Service rendered while temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or other installation, or to render professional, scientific or technical services of an occasional or exceptional character;
- D. Service rendered while employed pursuant to the provisions of subparagraph (5) of subsection 1101(a) of the Charter of the city, in the event of an emergency, to perform services required because of and during such emergency;
- E. Services rendered as a volunteer member of any police, fire or civil defense department, or of any police, fire or civil defense force or organization;
- F. Service rendered while employed; and service contracted for, pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;
- G. Service rendered while employed pursuant to Section 1110 of the Charter of the city;
- H. Service rendered while employed, and service paid for, on a part-time per diem, per hour or any basis other than a monthly basis, unless the person performing such service is a member of the system at the time he perform such service by virtue of the provisions of Section 3.24.480;
- I. Service rendered while employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons;
- J. Except as may be otherwise provided by Section 3.24.1080, service rendered by a person while he is a member of, or for which he receives or is entitled to credit under and by virtue of the provisions of, any police, fire or other retirement or pension system, other than this system or the federal social security system or any other federal retirement system, supported in whole or in part by the funds of the United States, any state government or political subdivision thereof, the city, or any other municipal corporation, if while a member thereof he received or was entitled to credit in such other system for such service.

(Prior code § 2904.92a.)

### **3.24.1020 Credit for prior service.**

Credit for prior service shall be granted to each person who was a member or was receiving a retirement allowance on July 1, 1951, or who becomes a member thereafter and within three years after said date.

(Prior code § 2904.96.)

### **3.24.1030 Computation - Procedure generally.**



The board shall credit one year for one thousand seven hundred thirty-nine hours of service rendered by any employee in any calendar year. Credit for more than one year of service shall not be allowed for service rendered in any calendar year.

(Prior code § 2904.98.)

**3.24.1040 Computation - Certain time periods excluded.**

Except as provided for absence on military service, time during which a member is absent from city service without compensation shall not be allowed in computing service.

(Prior code § 2904.97.)

**3.24.1050 Computation - Part-time service - Hours.**

For the purpose of calculating retirement services, credit for service for any member who works less than one thousand seven hundred thirty-nine hours in any calendar year shall be based on the ratio that the service rendered bears to one thousand seven hundred thirty-nine hours.

(Prior code § 2904.99.)

**3.24.1060 Part-time service - Compensation earnable.**

For the purpose of calculating retirement benefits based on part-time service, except under Sections 3.24.1480 and 3.24.1590, compensation earnable shall be taken as the compensation which would have been earnable if the employment had been on a full-time basis and the member had worked full-time.

(Prior code § 2904.100.)

**3.24.1070 Part-time service - Credit for time worked.**

In determining qualification for retirement and calculating benefits payable upon death before retirement, a year of service shall be credited for each year during which the member was employed throughout the year on a part-time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years shall be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged.

(Prior code § 2904.101.)

**3.24.1080 Service for which member was formerly entitled to credit under police and fire department retirement plan in Chapters 3.32 or 3.36.**

Subject to the following conditions, restrictions, limitations and other provisions, a member of this system who, immediately prior to becoming a member of this system, was a member of the police and fire department retirement plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this Code shall be entitled to credit under this system for service, if any, for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, if all of the following conditions exist and are satisfied:

- A. Such person must have been, immediately prior to becoming a member of this system, a

member of the police and fire department plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this Code; and

B. Such person must have held, immediately prior to becoming a member of this system, a city office or position in the police or fire department of the city which qualified him for membership in, and because of which he was a member of the above-mentioned police and fire department retirement plan; and

C. The office or position held by such person in the police or fire department of the city immediately prior to his becoming a member of this system must have been abolished or discontinued, and the functions and duties thereof, or substantially the same functions and duties, transferred to a city department or departments other than the police or fire departments; and

D. Such person must have been transferred, at the time his office or position in the police or fire department was abolished or discontinued, to a new office or position in a city department other than the police or fire department, to perform substantially the same functions and duties as he performed in his former office or position; and

E. Such persons abovementioned transfer must have taken place without any break in service rendered by such person, and without such person being required by the civil service regulations to take or pass any civil service examination for the office or position to which he was transferred; and

F. Such person's membership in the above-mentioned police and fire department retirement plan must have ceased and terminated as of the time of or immediately prior to his said transfer to an office or position entitling him to membership in this system; and

G. Such person must not have received or requested a return of any contributions paid or made by him to said police or fire department retirement plan, and must not have elected to continue making contributions to the police and fire department retirement plan pursuant to the provisions of Sections 3.32.010, 3.36.1620 or 3.36.1630; and

H. Such person must have filed with the retirement board, on or before and no later than the thirtieth day immediately following the date as of which his position in the police or fire department is abolished or discontinued and he is transferred to an office or position entitling him to membership in this system, a written statement, in duplicate, duly signed by him, wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department plan at the time his membership therein was last terminated, and wherein he consents to and authorizes the transfer and payment into the retirement fund established by this Chapter 3.24 from the retirement fund established under the police and fire department retirement plan of all moneys contributed by him to the police and fire department retirement fund, together with interest thereon; and

I. A copy of the statement specified in the immediately preceding H. shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and there shall have been transferred to the retirement fund established under this chapter, from the retirement fund established under the last mentioned police and fire department fund, all moneys contributed by said person to the abovementioned police and fire department retirement plan, together with interest thereon, moneys being so transferred being thereafter deemed to be normal contributions, or prior contributions where applicable, of said person to this retirement system for the service credited to him under this system.

(Prior code § 2904.92b.)

### **3.24.1090 Service for which member was formerly entitled to credit under police**

## **EXHIBIT B**

**and fire department retirement plan on or after February 1, 1962.**

Subject to the following conditions, restrictions, limitations and other provisions, a member of this system who, prior to becoming a member of this system was on or after February 1, 1962, a member of the police and fire department retirement plan established or administered pursuant to Chapter 3.32 or Chapter 3.36 of this Code, shall be entitled to credit under this system for service, if any, for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, if all of the following conditions exist and are satisfied:

A. Such person must have been, prior to becoming a member of this system, a member of the police and fire department retirement plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this Code; and

B. Such person must have held, prior to becoming a member of this system, a city position in the police or fire department of the city which qualified him for membership in, and because of which he was a member of the abovementioned police and fire department retirement plan; and

C. Such person's membership in the above-mentioned police and fire department retirement plan must have ceased and terminated prior to his becoming a member of this system; and

D. Such person must not have elected to continue making contributions to the police and fire department retirement plan, pursuant to the provisions of Sections 3.36.1620 or 3.36.1630; and

E. Such person must have filed with the retirement board:

1. On or before and no later than the thirtieth day immediately following the date on which there is deposited in the U.S. Mail addressed to him at his last place of residence as shown on the city's records, a written notice of his right to so elect, or

2. On or before and no later than the thirtieth day immediately following the date as of which he becomes a member of this system, whichever is the later date, a written statement, in duplicate, duly signed by him, wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, and wherein he agrees to pay into the retirement fund established by this chapter an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system equal to the amount they would be if he had been a member of this system, in the position to which he was appointed and because of which he became a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to get credit, and if the contributions payable to this system under such circumstances had been deducted from his compensation and paid into the retirement fund pursuant to this system during all of such time. Payment of such amount may be made by such person from any source or sources available to him including, but not limited to, transfer of moneys contributed by him to the police and fire department retirement fund, together with interest thereon, from the police and fire department retirement fund into the retirement fund established by this chapter; and

F. A copy of the statement specified in the immediately preceding subsection E. shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and said person shall have paid into the retirement fund established under this chapter:

1. On or before and no later than the thirtieth day immediately following the date on which he files with the retirement board, within the time prescribed in subsection E.1. of this section therefor, his written election to receive the above-described credit in the retirement fund; or

2. On or before and no later than the thirtieth day immediately following the date as of which he

is appointed to a position entitling him to membership in this system, whichever is the later date, an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system equal to the amount they would be if he had been a member of this system, in the position to which he was appointed and because of which he became a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to get credit, and if the contributions payable to this system under such circumstances had been deducted from his compensation and paid into the retirement fund pursuant to this system during all of such time.

(Prior code § 2904.92c.)

## **Part 12 ABSENCES**

### **Sections:**

- 3.24.1100 Absences on military service - Described.
- 3.24.1110 Member absent on military service - Contributions.
- 3.24.1120 Member absent on military service - Credit for absence.
- 3.24.1130 Member absent on military service - Entitled to accumulated contributions when.
- 3.24.1140 Member absent on military service - City shall contribute if absent member contributes.
- 3.24.1150 Member absent on military service - City contributions - Basis.
- 3.24.1160 Member absent on military service - City contributions - Payment and availability.
- 3.24.1170 Absence due to service-connected injury or illness - Effect on benefits.
- 3.24.1180 Absence due to service-connected injury or illness - Contributions.

### **3.24.1100 Absences on military service - Described.**

A member is absent on military service when he is absent from city service by reason of service with the armed forces or the Merchant Marine of the United States, or on ships operated by or for the United States Government, either during a war involving the United States as a belligerent or in any other national emergency or in time of peace if he is drafted for such service by the United States Government, and for six months thereafter.

(Prior code § 2904.102.)

### **3.24.1110 Member absent on military service - Contributions.**

Any member so absent who does not qualify to have his contributions made by the city under

Section 3.24.1150 may contribute to this system, either during his absence on military service or upon his return to city service, at times and in the manner prescribed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence if he had remained in city service. When made, such contributions are normal contributions.

(Prior code § 2904.103.)

**3.24.1120 Member absent on military service - Credit for absence.**

If he does so contribute, he shall receive credit for the absence as city service in the same manner as if he had not been absent from city service. If he does not contribute, he shall receive credit for the absence as city service solely for the purpose of qualifications for retirement and death benefits.

(Prior code § 2904.104.)

**3.24.1130 Member absent on military service - Entitled to accumulated contributions when.**

Any member absent on military service or absent from city service by reason of having been ordered by an authorized official of this state or the United States to duties outside city service shall be paid his accumulated contributions upon his request. Such payment terminates any election by such member to contribute.

(Prior code § 2904.105.)

**3.24.1140 Member absent on military service - City shall contribute if absent member contributes.**

Whenever a member elects to continue and continues such contributions, the same contributions shall be made by the city in respect to such absence that would have been made if the member had not been absent on military service.

(Prior code § 2904.106.)

**3.24.1150 Member absent on military service - City contributions - Basis.**

Notwithstanding the provisions of the preceding sections of this part, the city shall contribute for each member of this system, who is absent without compensation from city service on military service or on ships operated by or for the United States Government (not including service in the Merchant Marine), and who returns to city service within six months after discharge under conditions other than dishonorable, or within six months after any period of rehabilitation afforded by the United States Government including a period of rehabilitation for purely educational purposes, amounts equal to the contributions which would have been made by the employee and the city to the system on the basis of his compensation earnable at the commencement of his absence, plus the annual salary adjustments which he would have received if he had not been so absent. For the purpose of this section, the member absent on military service shall be deemed to have received a service rating for the period of such absence entitling him to annual salary adjustments. For the purpose of this section, a member who is or was granted a leave of absence or placed on a city civil service reemployment list as of the same date he was reinstated from military leave shall be considered as having returned to city service within said six months, if he returns to city service at the end of such leave of absence or upon offer of employment from the reemployment list, or if he retires under this system for service or disability during

such leave.

(Prior code § 2904.107.)

**3.24.1160 Member absent on military service - City contributions - Payment and availability.**

The contributions required of the city pursuant to Section 3.24.1150 may be made in one sum, or in the manner in which other contributions are made. Contributions pursuant to Section 3.24.1150 shall be available only for the purpose of benefits payable in event of death or retirement for service or disability and shall be made available only for the purpose of benefits payable in event of death or retirement, and an employee resigning from city service after reinstatement from military service shall be entitled to withdraw under Sections 3.24.510, 3.24.620 or 3.24.640 only that portion of his accumulated contributions personally made by him.

(Prior code § 2904.108.)

**3.24.1170 Absence due to service-connected injury or illness - Effect on benefits.**

Time during which a member is absent from city service by reason of injury or illness determined within one year after the end of such absence to have arisen out of and in the course of his employment shall be considered as spent in city service for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless he contributes as provided in Section 3.24.1180 and except as he receives compensation as distinguished from disability indemnity under the Labor Code, during the absence, and then only to the extent of compensation received.

(Prior code § 2904.109.)

**3.24.1180 Absence due to service-connected injury or illness - Contributions.**

Any member so absent by reason of such service-connected injury or illness may contribute to this system during his absence or upon his return to city service at times and in the manner prescribed by the board such amounts as may be necessary, when added to contributions deducted from compensation as distinguished from disability indemnity received by him during his absence, to contributions he would have made had he not been absent. If he does so contribute, he shall receive credit for all of the absence as city service.

(Prior code § 2904.109a.)

**Part 13  
RETIREMENT**

**Sections:**

- 3.24.1200 Retirement for service - Conditions.
- 3.24.1210 Retirement at age of seventy.
- 3.24.1220 Retirement for disability - Designated.
- 3.24.1230 Retirement for disability - Conditions.

- 3.24.1240 Retirement for disability - Application - Who may make.
- 3.24.1250 Retirement for disability - Application - Conditions.
- 3.24.1260 Retirement for disability - Board may require medical examination.
- 3.24.1270 Retirement for disability - Determination of disability.
- 3.24.1280 Retirement for disability - Pension may be discontinued when.
- 3.24.1290 Disability retirement allowance - Cancelled when - Reinstatement.
- 3.24.1300 Disability retirement allowance - Reentry of recipient into federated city service.
- 3.24.1310 Disability retirement allowance - When recipient does not reenter city service.
- 3.24.1320 Reinstatement from service retirement.
- 3.24.1330 Retired employee may not be employed by city unless first reinstated.

**3.24.1200 Retirement for service - Conditions.**

A member shall be retired for service upon his written application to the board if:

- A. He has attained age fifty-five and is entitled to be credited with at least twenty years of continuous service; or
- B. The following conditions exist:
  - 1. He is separated from city service because of a curtailment of or a change in the manner of performing such service, and not because of resignation or dismissal under charges;
  - 2. He has attained age fifty and is entitled to be credited with fifteen or more years of city service;
  - 3. The board determines that his separation is of an extended and uncertain duration, and not the separation normally experienced by members in positions known at the time of employment to be of limited duration or on a seasonal or intermittent basis.

(Prior code § 2904.110.)

**3.24.1210 Retirement at age of seventy.**

Every member shall be retired on the first day of the calendar month next succeeding that in which he attains age seventy. Every member who on July 1, 1951, has attained age seventy shall be retired forthwith.

(Prior code § 2904.111.)

### **3.24.1220 Retirement for disability - Designated.**

As used in this chapter, "disability" and "incapacity for performance of duty" as a basis of retirement, means disability of permanent or extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(Prior code § 2904.112.)

### **3.24.1230 Retirement for disability - Conditions.**

Any member incapacitated for the performance of duty shall be retired for disability pursuant to these sections if he is entitled to be credited with ten years of city service, regardless of age.

(Prior code § 2904.113.)

### **3.24.1240 Retirement for disability - Application - Who may make.**

Application to the board for retirement of a member for disability may be made by:

- A. The head of the office or department in which the member is or was last employed;
- B. The city manager;
- C. The member, or any person in his behalf who is legally authorized to act for him.

(Prior code § 2904.114.)

### **3.24.1250 Retirement for disability - Application - Conditions.**

The application shall be made only while the member is in city service, within four months after his discontinuance of city service, or while he is physically or mentally incapacitated to perform his duties from the date of discontinuance of city service to the time of application or motion. On receipt of an application, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether he is incapacitated for the performance of duty.

(Prior code § 2904.115.)

### **3.24.1260 Retirement for disability - Board may require medical examination.**

The board may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service to undergo medical examination, and upon his application for reinstatement, shall cause a medical examination to be made of any such recipient who is at least six months less than the age of seventy. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of such examination, the board shall determine whether he is still incapacitated, physically or mentally, for service in a position of the same class as the position held by him when retired for disability, or for other duties proposed to be assigned to him.

(Prior code § 2904.117.)

### **3.24.1270 Retirement for disability - Determination of disability.**



If the medical examination and other available information show to the satisfaction of the board that the member is incapacitated physically or mentally for the performance of his duties in the city service and is eligible to retire for disability, the board shall forthwith retire him for disability.

(Prior code § 2904.116.)

**3.24.1280 Retirement for disability - Pension may be discontinued when.**

If any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his class refuses to submit to medical examination, the pension portions of his allowance may be discontinued until his withdrawal of such refusal. If such refusal continues for one year, his disability retirement allowance may be canceled.

(Prior code § 2904.120.)

**3.24.1290 Disability retirement allowance - Cancelled when - Reinstatement.**

If the board determines that such recipient is not so incapacitated, his disability retirement allowance shall be cancelled forthwith. He shall then be reinstated, at his option, to the position held by him when retired for disability or to a position in the same classification with duties within his capacity.

(Prior code § 2904.118.)

**3.24.1300 Disability retirement allowance - Reentry of recipient into federated city service.**

If the recipient of a disability retirement allowance is reemployed in federated city service, as federated city service is defined in Chapter 3.28 of this title, and thus becomes eligible for membership in the retirement system established by said Chapter 3.28, his disability retirement allowance shall be canceled as of the time he enters said federated city service and he shall thereafter be governed by the provisions of said Chapter 3.28.

(Prior code § 2904.121.)

**3.24.1310 Disability retirement allowance - When recipient does not reenter city service.**

If the retirement allowance of any person retired for disability is canceled for any cause other than reentrance into city service, and if he does not reenter city service, an account which is the actuarial equivalent of his annuity at cancellation, based on a disabled life, but not exceeding the amount of his accumulated contributions at the time of his retirement for disability shall be credited to his individual account, and shall be refunded to him unless he elects, under Section 3.24.510, to allow his accumulated contributions to remain in the retirement fund.

(Prior code § 2904.122.)

**3.24.1320 Reinstatement from service retirement.**

A person who has been retired for service under this system may be reinstated from retirement to the federated city service pursuant to the provisions of Section 3.28.410 of this Code. Upon such reinstatement the service retirement allowance theretofore payable to him under this system shall be canceled.

(Prior code § 2904.123.)

**3.24.1330 Retired employee may not be employed by city unless first reinstated.**

A person who has been retired under this system for service or for disability shall not be employed thereafter by the city unless he has first been reinstated from retirement pursuant to this chapter. The provisions of Section 3.24.1430 apply to any person employed in violation of this section.

(Prior code § 2904.126.)

**Part 14  
BENEFITS**

**Sections:**

- 3.24.1350 Method of payment.
- 3.24.1355 Benefit limitations.
- 3.24.1360 Rights and benefits unassignable.
- 3.24.1370 Benefits shall not be modified.
- 3.24.1380 Qualified members may not be deprived of retirement rights.
- 3.24.1390 Beneficiary - Designation requirements.
- 3.24.1400 Beneficiary - Changes permitted when.
- 3.24.1410 Designation of beneficiary not affected by termination of or break in membership.
- 3.24.1420 Release or relinquishment of rights and benefits -Assignments to city.
- 3.24.1430 Persons entitled to retirement allowance - Certain compensation prohibited.

**3.24.1350 Method of payment.**

A pension, an annuity or a retirement allowance granted by this chapter is payable in equal monthly installments, but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.

(Prior code § 2904.127.)

**3.24.1355 Benefit limitations.**

A. Notwithstanding any other law, the benefits payable to any person who becomes a member of this system on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (2)(G)) without regard to paragraph (2)(F) of

said Section 415.

B. Notwithstanding any other law, the benefits payable to any person who became a member of this system prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

1. The limitations set forth in Section 415 of the Internal Revenue Code; or
2. The accrued benefit of the member without regard to any benefit increases pursuant to any amendment of this system adopted after October 14, 1987.

C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial equivalences shall be based on a five percent interest rate and the 1983 Group Annuity Table for Males with a two-year setback.

(Ord. 23283.)

#### **3.24.1360 Rights and benefits unassignable.**

The right of a person to any benefit or other right under this chapter and the money in the retirement fund are unassignable except as specifically provided in this chapter.

(Prior code § 2904.128.)

#### **3.24.1370 Benefits shall not be modified.**

The benefits payable under this system shall not be modified on account of any amounts paid to a retired member or beneficiary, as defined in Part 1 of this chapter, under Division 4 of the Labor Code.

(Prior code § 2904.129.)

#### **3.24.1380 Qualified members may not be deprived of retirement rights.**

Subject to compliance with this chapter, after a member has qualified as to service and disability for retirement for disability, or as to age and service for retirement for service, nothing shall deprive him of the right to a retirement allowance as determined under this chapter.

(Prior code § 2904.130.)

#### **3.24.1390 Beneficiary - Designation requirements.**

A. A member may at any time designate, by a writing filed with the board, a beneficiary to receive such benefits as may be payable to his beneficiary or estate under this chapter; provided, however, that a member may not designate a corporation to receive a benefit payable under Section 3.24.1930, Section 3.24.1940, or Section 3.24.1950 of Part 19 of this chapter.

B. Except as hereinafter otherwise provided, the designation of beneficiary may be by class, subject to such conditions as may be imposed by board rule, in which case such members of the class as are in being at the time of the member's death shall be entitled as beneficiaries. The designation of a beneficiary under any of the optional settlements authorized by Part 19 of this chapter, Sections 3.24.1900 through 3.24.1950 inclusive, may not be by class.

C. The right of any person designated as a beneficiary by a member to any benefits hereunder

shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of such person so designated as beneficiary, and payment made by the system in reliance on any such determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of the system from further liability for the benefit.

(Prior code § 2904.131.)

#### **3.24.1400 Beneficiary - Changes permitted when.**

The designation of a beneficiary under this system, other than designations under optional settlements two, three and four, may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.

(Prior code § 2904.132.)

#### **3.24.1410 Designation of beneficiary not affected by termination of or break in membership.**

The designation of a beneficiary by a member is not affected by termination of nor a break in his membership.

(Prior code § 2904.133.)

#### **3.24.1420 Release or relinquishment of rights and benefits - Assignments to city.**

A. Anything elsewhere in this Part 14, or in this Chapter 3.24, or elsewhere in this Code to the contrary notwithstanding, any right, title or interest which any member of this retirement system or any other person or persons may have or may claim to have in or to any retirement or other allowance or in or to any benefit or benefits whatsoever, or in or to any moneys whatsoever, or any other right, title or interest which any person or persons may have or claim to have, under or by virtue of the provisions of this retirement system, whether such right, title or interest is vested, contingent or otherwise, may be released, relinquished and given up by such member or by such other person or persons, or may be assigned to the city or to the retirement system or retirement board by such member or other person or persons; and, upon such being done, the right, title or interest which is so released, relinquished, given up or assigned is and shall be deemed extinguished, the same as if such right, title or interest has never existed, and neither the city nor this retirement system or retirement board shall thereafter have any liability whatsoever with respect to the right, title or interest so released, extinguished or given up.

B. If and to the extent that the city pays or gives any consideration, other than funds of this retirement system, for any above-mentioned release, relinquishment, giving up or assignment, the amount or value of the consideration paid or given by the city for said release, relinquishment, giving up or assignment, or the actuarial value of the right, title or interest which is so released, relinquished, given up or assigned, as of the date of such release, relinquishment, giving up or assignment, whichever is the lesser amount, shall be credited against and deducted from the amount of current service contributions which the city is required to pay into the retirement fund during the following calendar months until full credit therefor is thus received by the city.

(Prior code § 2904.133a.)

#### **3.24.1430 Persons entitled to retirement allowance - Certain compensation prohibited.**

Compensation other than that for services as an independent contractor is forbidden one entitled to retirement allowance.

(Prior code § 2904.32.)

## **Part 15**

### **SERVICE RETIREMENT GENERALLY**

#### **Sections:**

- 3.24.1450 Limited applicability of Part 15.
- 3.24.1460 Service retirement allowance.
- 3.24.1470 Service retirement annuity.
- 3.24.1480 Retirement allowance.
- 3.24.1490 Current service pension - Described - Table.
- 3.24.1500 Current service pension - Reinstated members.
- 3.24.1510 Prior service pension - Described.
- 3.24.1520 Prior service pension - Derivation.
- 3.24.1530 Prior service pension - Computation.

#### **3.24.1450 Limited applicability of Part 15.**

On and after the effective date of this section, the provisions of this Part 15 shall no longer apply to any person to whom the provisions of Part 16 of this chapter thereafter apply.

(Prior code § 2904.140a.)

#### **3.24.1460 Service retirement allowance.**

Upon retirement for service, a member is entitled to receive a service retirement allowance which shall consist of:

- A. His service retirement annuity;
- B. His current service pension;
- C. His prior service pension.

(Prior code § 2904.134.)

#### **3.24.1470 Service retirement annuity.**

The service retirement annuity is the sum of the annuities which are the actuarial equivalents of the normal prior service and additional accumulated contributions of a member at the time of his

retirement.

(Prior code § 2904.135.)

### 3.24.1480 Retirement allowance.

The retirement allowance referred to in this part excludes that portion of a member's service retirement annuity that was purchased by his accumulated additional contributions. If a member enters this system with credit for prior service, and retires after attaining age seventy, or if a member is entitled to be credited with twenty years of continuous city service and retires after attaining age sixty-five, and his retirement allowance is less than one-half of his final compensation and less than seven hundred twenty dollars per year, his prior or current service pension, as the case may be, shall be increased so as to cause his retirement allowance to amount to one-half of such final compensation, or seven hundred twenty dollars per year, whichever is less.

(Prior code § 2904.138.)

### 3.24.1490 Current service pension - Described - Table.

A. The current service pension for a member is a pension derived from the contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his retirement, to equal the fraction of one-sixtieth of his final compensation set forth opposite his age at retirement, taken to the preceding completed quarter year, in the following table in the column applicable to his sex, multiplied by the number of years of current service with which he is entitled to be credited at retirement:

Age of Retirement	Fraction	
	Men	Women
55	.7279859	.7454885
55 - 1/4	.7393043	.7561871
55 - 1/2	.7506227	.7668857
55 - 3/4	.7619411	.7775843
56	.7732594	.7882828
56 - 1/4	.7855785	.7998706
56 - 1/2	.7978975	.8114584
56 - 3/4	.8102166	.8230462
57	.8225356	.8346340
57 - 1/4	.8360043	.8472396
57 - 1/2	.8494729	.8598451
57 - 3/4	.8629416	.8724507

58	.8764102	.8850562
58 - 1/4	.8911573	.8987803
58 - 1/2	.9059044	.9125043
58 - 3/4	.9206515	.9262283
59	.9353986	.9399523
59 - 1/4	.9515480	.9549643
59 - 1/2	.9676993	.9699762
59 - 3/4	.9838497	.9849881
60	1.0000000	1.0000000
60 - 1/4	1.0110756	1.0111938
60 - 1/2	1.0221511	1.0223875
60 - 3/4	1.0332267	1.0335813
61	1.0443022	1.0447750
61 - 1/4	1.0591095	1.0597869
61 - 1/2	1.0739167	1.0747987
61 - 3/4	1.0887240	1.0898106
62	1.1035312	1.1048224
62 - 1/4	1.1191698	1.1207671
62 - 1/2	1.1348083	1.1367118
62 - 3/4	1.1504469	1.1526565
63	1.1660854	1.1686012
63 - 1/4	1.1826342	1.1855895
63 - 1/2	1.1991829	1.2025777
63 - 3/4	1.2157317	1.2195660
64	1.2322804	1.2365542
64 - 1/4	1.2498384	1.2547498
64 - 1/2	1.2673963	1.2729454
64 - 3/4	1.2849542	1.2911410

65 and over	1.3025121	1.3093365
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B. The fractions herein set forth at ages other than age sixty are based on the interest rate and mortality tables used under the San José federated employee's retirement system with respect to members on July 1, 1951, and shall be adjusted by the board in accordance with such interest and mortality tables as the board may adopt with respect to such members. Fractions required for ages below fifty-five, because of retirement for service under subsection B. of Section 3.24.1000, shall be determined by the board according to the interest rate and mortality tables then being used by the system.

(Prior code § 2904.136.)

### **3.24.1500 Current service pension - Reinstated members.**

A. The current service pension of any member reinstated from service retirement, upon his service retirement subsequent to such reinstatement, shall be the sum of:

1. A current service pension calculated on the basis of service rendered after such reinstatement and in accordance with Section 3.24.1490; plus
2. His current service pension as it was prior to his reinstatement, adjusted according to any change in the provisions governing the calculation of such pensions, made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this system; or if he has rendered one year or more of city service after reinstatement, in lieu of subsection 2.; plus
3. A current service pension based on current service rendered prior to such reinstatement, but calculated under Section 3.24.1490:
  - a. On the basis of an age, taken to the preceding completed quarter year but not less than fifty-five years, and determined by deducting from his age at his subsequent retirement, the aggregate time during which he was under retirement, and
  - b. On the basis of his final compensation as it was at the date of his preceding retirement.

B. For such a member reinstated from disability retirement, the current service disability retirement, the current service pension upon his service retirement after attaining age fifty-nine, or upon his disability retirement after attaining age sixty, and subsequent to such reinstatement, shall be calculated in the manner described in the preceding sentence, but the age determined upon subsequent retirement after rendering at least one year of city service shall not be taken at less than fifty-nine years if the subsequent retirement is for service, or sixty years if such retirement is for disability.

(Prior code § 2904.136a.)

### **3.24.1510 Prior service pension - Described.**

The prior service pension for a member, is an annual pension derived from the contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contributions of the member at the date of his retirement, to equal the fraction of one-sixtieth of his final compensation set forth opposite his age at retirement, taken to the preceding completed quarter year, in the table which appears in Section 3.24.1490, and in the column applicable to his sex, multiplied by the number of years of prior service with which he is entitled to be credited at retirement.



(Prior code § 2904.137.)

### **3.24.1520 Prior service pension - Derivation.**

The portion of prior service pensions which is not provided by members' prior service accumulated contributions is derived from contributions of the city.

(Prior code § 2904.139.)

### **3.24.1530 Prior service pension - Computation.**

A. The prior service pension of any member reinstated from service retirement, upon his subsequent service retirement, shall be in the same amount as his prior service pension prior to his reinstatement, adjusted according to any change in the provisions governing the calculation of such pensions made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this system; otherwise the prior service pension calculated:

1. On the basis of an age, taken to the preceding completed quarter year but not less than fifty-five years, and determined by deducting from his age at his subsequent retirement, the aggregate time during which he was under retirement; and

2. If final compensation entered into the calculation of his prior service pension before his reinstatement, on the basis of his final compensation as it 3.24.1640 was at the date of his preceding retirement.

B. For such a member reinstated from disability retirement, the prior service pension upon his service retirement after attaining age fifty-nine, or upon his disability retirement after attaining age sixty and subsequent to such reinstatement, shall be calculated in the manner described in the preceding sentence, but the age, determined upon subsequent retirement after rendering at least one year of city service, shall not be taken at less than fifty-nine years if the subsequent retirement is for service, or sixty years if such retirement is for disability.

(Prior code § 2904.140.)

## **Part 16**

### **SERVICE RETIREMENT FOR CERTAIN MEMBERS ON AND AFTER EFFECTIVE DATE**

#### **Sections:**

- 3.24.1550 Applicability of Part 16.
- 3.24.1560 Option for persons who became members prior to effective date of Part 16.
- 3.24.1570 Option - Time limit and procedures required.
- 3.24.1580 Service retirement allowance - Composition.
- 3.24.1590 Retirement allowance - Computation.
- 3.24.1600 Service retirement allowance - Maximum amount.

3.24.1610 Service retirement annuity.

3.24.1620 Current service pension - Described - Table.

3.24.1630 Current service pension - For members formerly reinstated from service retirement.

3.24.1640 Current service pension - For members formerly reinstated from disability retirement.

3.24.1650 Prior service pension - Computation.

3.24.1660 Prior service pension - Derivation.

3.24.1670 Prior service pension - For members formerly reinstated from service retirement.

3.24.1680 Prior service pension - For members formerly reinstated from disability retirement.

### **3.24.1550 Applicability of Part 16.**

A. The provisions of this Part 16 shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system and to service retirement benefits payable to them after the effective date of this Part 16, as follows:

1. All persons who became members of this retirement system on or after the effective date of this part, excepting persons who on the effective date of this part are on service retirement or disability retirement under this retirement system who may subsequently be reinstated from such retirement;

2. Each person who became a member of the retirement system prior to the effective date of this part if he is a member of such system on said effective date and if, in addition, he is given the option hereinafter specified in Section 3.24.1560 and exercises such option in the manner and within the time specified in Section 3.24.1570 of this chapter.

B. Any person who became a member of the retirement system prior to the effective date of this Part 16 shall not be governed by any of the provisions of this part and shall not be entitled to any of the benefits provided for or specified in this part if he is not a member of the retirement system on the effective date of this part, or if he is not given the option hereinafter specified in Section 3.24.1560, or if he is given such option but refuses or fails to exercise such option in the manner and within the time specified in Section 3.24.1570; but any such person shall continue to be governed by the provisions of Part 15 of this chapter.

(Prior code § 2904.140h.)

### **3.24.1560 Option for persons who became members prior to effective date of Part 16.**

A. Each member of this retirement system who became such prior to the effective date of this Part 16 shall have and is hereby given, if and only if he is a member on the effective date of this part, an option of being governed by the provisions of this Part 16 and of being entitled to such rights and benefits as are provided for in this part, subject to the conditions, limitations, restrictions and

requirements mentioned or referred to in this part or elsewhere in this chapter, in lieu of being governed by the provisions of Part 15 and in lieu of being entitled to any of the rights or benefits provided for in Part 15. Such option is not given to any person who on the effective date of this part is on service retirement or disability retirement.

B. No such member to whom such option is given shall be governed by the provisions of this Part 16, nor be entitled to any of the rights or benefits provided for in this part, unless he exercises such option within the time specified in Section 3.24.1570, and no later, in the manner specified in said Section 3.24.1570.

C. Each such member who exercises said option within the time and in the manner specified in said Section 3.24.1570 shall, on and after the effective date of this Part 16, be governed by the provisions of this part, and be entitled to the rights and benefits provided for in this part, subject to the abovementioned conditions, limitations, restrictions and requirements, in lieu of being governed by the provisions of Part 15, and in lieu of any rights or benefits provided for in Part 15 of this chapter.

(Prior code § 2904.140i.)

#### **3.24.1570 Option - Time limit and procedures required.**

Each such member who is given the option hereinabove specified in Section 3.24.1560 must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement, on a form to be furnished to him on his request by said secretary, declaring that he elects to exercise such option. The statement shall be filed as aforesaid on or before, and no later than, the ninetieth day immediately following the effective date of this Part 16, excepting, however, that any such member who on the effective date of this part is on temporary leave from city service because of active service in the armed forces of the United States may file the statement exercising such option with the secretary on or before, and no later than, the ninetieth day immediately following the date of expiration of his said leave or his return to duty, whichever is earlier. Upon filing of said written statement with the secretary in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his said option, effective from and after the effective date of this Part 16.

(Prior code § 2904.140j.)

#### **3.24.1580 Service retirement allowance - Composition.**

Upon retirement for service, a member to whom the provisions of this Part 16 apply shall be entitled to receive a service retirement allowance which shall consist of:

- A. His service retirement annuities;
- B. His current service pension;
- C. His prior service pension.

(Prior code § 2904.140k.)

#### **3.24.1590 Retirement allowance - Computation.**

The retirement allowance referred to in this section excludes that portion of a member's service retirement annuity that was purchased by his accumulated additional contributions. If a member enters this system with credit for prior service and retires for service after attaining age seventy, or if a

member is entitled to be credited with twenty years of continuous city service and retires from service after attaining age sixty-five, and his service retirement allowance is less than one-half of his final compensation and less than seven hundred twenty dollars per year, his prior or current service pension, as the case may be, shall be increased so as to cause his retirement allowance to amount to one-half of such final compensation or seven hundred twenty dollars per year, whichever is less.

(Prior code § 2904.140q.)

### **3.24.1600 Service retirement allowance - Maximum amount.**

Anything elsewhere to the contrary notwithstanding, the service retirement allowance of a member to whom the provisions of this Part 16 apply shall never exceed an amount equal to eighty-five percent of such member's final compensation. As used in this section, "service retirement allowance" means the sum of "his service retirement annuity," "his current service pension" and "his prior service pension" referred to in Section 3.24.1580 of this part, excluding, however, such portion of "his service retirement annuity" as is the actuarial equivalent of accumulated additional contributions made by a member pursuant to the provisions of Section 3.24.740.

(Prior code § 2904.140z.)

### **3.24.1610 Service retirement annuity.**

The service retirement annuity of a member who is governed by the provisions of this Part 16 is the sum of the annuities which are the actuarial equivalents of the normal prior service and the additional accumulated contributions of a member at the time of his retirement.

(Prior code § 2904.140l.)

### **3.24.1620 Current service pension - Described - Table.**

A. Subject to other provisions of this chapter, the current service pension for a member governed by the provisions of this part is a pension derived from contributions of the city sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contribution and the accumulated normal contributions of the member at the date of his retirement, and when also added to the prior service pension of such member, to equal the following: Two percent of his final compensation for each of the first twenty-five years of service (including both prior service and current service) for which such member is entitled to credit at the time of his retirement, plus one percent of his final compensation for each year of such member's service (including both prior service and current service) in excess of twenty-five years, multiplied by the retirement age factor in the second column of the following retirement age factor table opposite his age at time of retirement, taken to the preceding completed quarter year:

Retirement Age Factor Table

Age at Retirement	Retirement Factor
55	1,000
55 - 1/4	1,005
55 - 1/2	1,010

55 - 3/4	1,015
56	1,020
56 - 1/4	1,025
56 - 1/2	1,030
56 - 3/4	1,035
57	1,040
57 - 1/4	1,045
57 - 1/2	1,050
57 - 3/4	1,055
58	1,060
58 - 1/4	1,065
58 - 1/2	1,070
58 - 3/4	1,075
59	1,080
59 - 1/4	1,085
59 - 1/2	1,090
59 - 3/4	1,095
60	1,100
60 - 1/4	1,110
60 - 1/2	1,120
60 - 3/4	1,130
61	1,140
61 - 1/4	1,150
61 - 1/2	1,160
61 - 3/4	1,170
62	1,180
62 - 1/4	1,190
62 - 1/2	1,200

62 - 3/4	1,210
63	1,220
63 - 1/4	1,230
63 - 1/2	1,240
63 - 3/4	1,250
64	1,260
64 - 1/4	1,270
64 - 1/4	1,280
64 - 1/4	1,290
65 and over	1,300

B. Fractions required for ages below fifty-five because of retirement for service under subsection B. of Section 3.24.1200, shall be determined by the board.

(Prior code § 2904.140m.)

**3.24.1630 Current service pension - For members formerly reinstated from service retirement.**

A. If a member who is governed by the provisions of this Part 16 should retire for service pursuant to the provisions of this retirement system after the effective date of this part, and if, subsequent to being so retired for service he is reinstated to service, and if after such reinstatement to service he again retires for service hereunder, his current service pension, upon his latest retirement for service, shall be as follows:

1. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his current service pension shall be the sum of:

a. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of service rendered after such reinstatement; plus

b. His current service pension as it was prior to said reinstatement, adjusted in accordance with any change in the provisions governing the calculation of his current service pension, made after said reinstatement, which would have applied to him had he continued in retirement.

2. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his "current service pension" shall be the sum of:

a. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of service rendered after such reinstatement; plus

b. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:

i. Current service rendered prior to said reinstatement,

ii. His age at time of his latest service retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his latest retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he was on retirement, and

iii. His final compensation as it was on the date of his first service retirement.

(Prior code § 2904.140n.)

**3.24.1640 Current service pension - For members formerly reinstated from disability retirement.**

If a member who is governed by the provisions of this Part 16 should retire for disability pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for disability he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his current service pension, upon his latest retirement for service, shall be as follows:

A. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his current service pension shall be the sum of:

1. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of current service rendered after such reinstatement; plus

2. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:

a. Current service rendered prior to his preceding disability retirement,

b. His age at the time he was retired for disability, and

c. His final compensation as it was on the date he was retired for disability.

B. If such members latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding disability retirement, then in that event his current service pension shall be the sum of:

1. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of current service rendered after such reinstatement, plus:

2. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:

a. Current service rendered prior to his preceding disability retirement,

b. His age at the time of his latest service retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his latest retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he

was on retirement, and

c. His final compensation as it was on the date he was retired for disability.

(Prior code § 2904.140o.)

### **3.24.1650 Prior service pension - Computation.**

Subject to other provisions of this chapter, the prior service pension for a member governed by the provisions of this Part 16 is an annual pension derived from contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contributions of the member at the date of his retirement to equal the following: Two percent of his final compensation for each of the first twenty-five years of prior service for which such member is entitled to credit at the time of his retirement, plus one percent of his final compensation for each year at his prior service in excess of his first twenty-five years of such service, multiplied by the retirement age factor specified opposite his age at time of retirement, taken to the preceding quarter year, in the second column of the retirement age factor table which is set forth in Section 3.24.1620.

(Prior code § 2904.140p.)

### **3.24.1660 Prior service pension - Derivation.**

The portion of prior service pensions which is not provided by members' prior service accumulated contributions is derived from contributions of the city.

(Prior code § 2904.140r.)

### **3.24.1670 Prior service pension - For members formerly reinstated from service retirement.**

If a member who is governed by the provisions of this Part 16 should retire for service pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for service he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his prior service pension, upon his latest retirement for service, shall be as follows:

A. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his prior service pension shall be in the same amount as his prior service pension prior to his reinstatement, adjusted in accordance with any change in the provisions governing the calculation of such prior service pension made after said reinstatement and applicable to such pensions being paid at the date of the change.

B. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his prior service pension shall be calculated on the basis of:

1. His age at the time of his latest retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his last retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he was on retirement; and

2. If final compensation entered into the calculation of his prior service pension before his



reinstatement, on the basis of his final compensation as it was at the date of his preceding service retirement.

(Prior code § 2904.140s.)

**3.24.1680 Prior service pension - For members formerly reinstated from disability retirement.**

If a member who is governed by the provisions of this Part 16 should retire for disability pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for disability he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his prior service pension upon his latest retirement for service, shall be as follows:

A. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his prior service pension shall be calculated on the basis of:

1. His age on the date he was previously retired for disability, taken to the preceding completed quarter year; and
2. His final compensation as it was on the date he was previously retired for disability.

B. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his prior service pension shall be calculated on the basis of:

1. His age at the time of his latest service retirement taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his last retirement, determined by deducting from his age at his subsequent retirement the aggregate time during which he was on disability retirement; and
2. If his preceding disability retirement allowance included an annuity or pension derived from his accumulated prior service contributions and from the city's prior service contributions and his final compensation entered into the calculation of such annuity or pension, on the basis of his final compensation as it was at the date of his preceding disability retirement.

(Prior code § 2904.140t.)

**Part 17  
DISABILITY RETIREMENT GENERALLY**

Sections:

- |           |   |
|-----------|---|
| 3.24.1700 | Limited applicability of Part 17.                     |
| 3.24.1710 | Retirement for disability after attaining age sixty.  |
| 3.24.1720 | Retirement for disability before attaining age sixty. |
| 3.24.1730 | Disability retirement pension - Amount.               |

3.24.1740 Disability retirement pension - Reduction required when.

3.24.1750 Disability retirement pension - Maximum amount.

**3.24.1700 Limited applicability of Part 17.**

On and after the effective date of this section, the provisions of this Part 17 shall no longer apply to any person to whom the provisions of Part 18 of Chapter 3.24 thereafter apply.

(Prior code § 2904.140z1.)

**3.24.1710 Retirement for disability after attaining age sixty.**

If a member is retired for disability after he has attained age sixty, he shall receive a disability retirement allowance equal to what would be his service retirement allowance if such were calculated under, in accordance with and pursuant to the provisions of Part 15 of Chapter 3.24.

(Prior code § 2904.141.)

**3.24.1720 Retirement for disability before attaining age sixty.**

If a member is retired for disability before he attains age sixty, he shall receive a disability retirement allowance which shall consist of:

A. An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement; and

B. A "disability retirement pension" derived from the contributions of the city.

(Prior code § 2904.142.)

**3.24.1730 Disability retirement pension - Amount.**

The disability retirement pension shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions plus his accumulated prior service contributions, will make his disability retirement allowance equal:

A. Ninety percent of one-sixtieth of his final compensation multiplied by the number of years of service credited to him; or

B. If the disability retirement allowance computed under subsection A. of this section does not exceed one-fourth of his final compensation, ninety percent of one-sixtieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty, but in such case the retirement allowance shall not exceed one-fourth of such final compensation.

(Prior code § 2904.143.)

**3.24.1740 Disability retirement pension - Reduction required when.**

A. If, prior to attaining age fifty-five, a recipient of a disability retirement allowance engages in a gainful occupation not in the city service, the board shall reduce his monthly disability retirement

pension to an amount which when added to the compensation earned monthly by him, shall not exceed the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.

B. If his earnings are further altered, the board may further alter his disability retirement pension to the lower of the following amounts:

1. The amount of the disability retirement pension upon which he was originally retired;

2. An amount which, when added to the compensation earned by him, shall equal the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.

C. When he reaches age fifty-five, his retirement allowance shall be made equal to the amount at which it would be in the absence of a reduction under this section.

(Prior code § 2904.145.)

### **3.24.1750 Disability retirement pension - Maximum amount.**

In no event shall the disability retirement pension under Sections 3.24.1720 and 3.24.1730 be more than sufficient to make the disability retirement allowance, exclusive of any annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions which would be receivable by a member if he were to retire for service at age sixty and his service retirement allowance were computed pursuant to and in accordance with the provisions of Part 15 of Chapter 3.24.

(Prior code § 2904.144.)

## **Part 18**

### **DISABILITY RETIREMENT FOR CERTAIN MEMBERS ON AND AFTER EFFECTIVE DATE**

Sections:

3.24.1800 Applicability of Part 18.

3.24.1810 Applicability of Part 17 to disability retirement allowance to members entitled to benefits pursuant to Part 18.

3.24.1820 Disability retirement allowance - For persons retiring after age fifty-five.

3.24.1830 Disability retirement allowance - For persons retiring before age fifty-five.

3.24.1840 Disability retirement pension.

3.24.1850 Maximum disability retirement.

3.24.1860 Disability retirement allowance - Reduction because of certain

earnings.

### **3.24.1800 Applicability of Part 18.**

A. The provisions of this Part 18 shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system, and to disability retirement benefits payable to them after the effective date of this part, as follows:

1. All persons who became or become members of this retirement system on or after the effective date of Part 16 of this chapter, excepting persons who on said effective date of said Part 16 were on service retirement or disability retirement under this retirement system who were or could subsequently be reinstated from such retirement;

2. Each person who became a member of the retirement system prior to the effective date of said Part 16 if he was a member of such system on said effective date and if, in addition, he was given the option specified in Section 3.24.1560 of Part 16 and exercised said option in the manner and within the time specified in Section 3.24.1570 of Part 16.

B. Any person who became a member of the retirement system prior to the effective date of said Part 16 shall not be governed by the provisions of this Part 18, and shall not be entitled to any of the benefits provided for or specified in this part, if he was not a member of the retirement system on the effective date of said Part 16, or if he was not given the option hereinafter specified in said Section 3.24.1560, or if he was given such option but refused or failed to exercise such option in the manner and within the time specified in Section 3.24.1570; but any such person shall continue to be governed by the provisions of Part 17 of this Chapter 3.24.

C. Persons who, under and by virtue of the preceding provisions of this section are to be governed by the provisions of this Part 18 shall be entitled to such rights and benefits as are provided for in this Part 18, subject to the conditions, limitations, restrictions and requirements mentioned or referred to in this Part 18 or elsewhere in this Chapter 3.24, in lieu of being governed by the provisions of Part 17 and in lieu of being entitled to any of the rights or benefits provided for in Part 17.

(Prior code § 2904.145h.)

### **3.24.1810 Applicability of Part 17 to disability retirement allowance to members entitled to benefits pursuant to Part 18.**

Notwithstanding the provisions of Part 18, the disability retirement allowance calculated in accordance with the provisions of this Part 18 shall not be less than the disability retirement allowance calculated in accordance with Part 17 of this chapter.

(Prior code § 2904.145n.)

### **3.24.1820 Disability retirement allowance - For persons retiring after age fifty-five.**

Subject to other provisions of this Part 18, if a member is retired for disability after he has attained the age of fifty-five years, he shall receive a disability retirement allowance equal to what would be his service retirement allowance if such were calculated under, in accordance with and pursuant to the provisions of Part 16 of Chapter 3.24.

(Prior code § 2904.146i.)

**3.24.1830 Disability retirement allowance - For persons retiring before age fifty-five.**

Subject to other provisions of this Part 18, if a member retired for disability before he attains the age of fifty-five years, he shall receive a disability retirement allowance which shall consist of:

- A. An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement for disability; and
- B. A disability retirement pension derived from contributions of the city.

(Prior code § 2904.145j.)

**3.24.1840 Disability retirement pension.**

The disability retirement pension referred to in subsection B. of Section 3.24.1830 shall be in such an amount of money as, with that portion of the annuity provided by the member's accumulated normal contributions plus his accumulated prior service contributions, will make his disability retirement allowance equal:

- A. Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him; or
- B. If the disability retirement allowance computed pursuant to the foregoing provisions of this Part 18 does not exceed one-fourth of his final compensation, ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be credited to him were his service to continue until attainment by him of the age of fifty-five years, but in such case the disability retirement allowance shall not exceed one-fourth of such final compensation.

(Prior code § 2904.145k.)

**3.24.1850 Maximum disability retirement.**

In no event shall the disability retirement allowance payable to a member under the provisions of this part, exclusive of any annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions, to which such member would be entitled if at the time he retired for disability he were fifty-five years of age and were retired for service in lieu of being retired for disability, and if, in addition, his service retirement allowance were computed and determined pursuant to and in accordance with the provisions of Part 16 of this chapter.

(Prior code § 2904.145l.)

**3.24.1860 Disability retirement allowance - Reduction because of certain earnings.**

A. If, prior to attaining age fifty-five, a recipient of a disability retirement allowance engages in a gainful occupation not in the city service, the board shall reduce his monthly disability retirement allowance to an amount which, when added to the compensation earned monthly by him shall not exceed the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.

B. If his earnings are further altered, the board may further alter his disability retirement allowance to the lower of the following amounts:

1. The amount of the disability retirement allowance upon which he was originally retired.

2. An amount which, when added to the compensation earned by him, shall equal the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.

C. When he reaches age fifty-five, his disability retirement allowance shall be made equal to the amount at which it would be in the absence of a reduction under this section.

(Prior code § 2904.145m.)

## **Part 19**

### **OPTIONAL SETTLEMENTS**

#### **Sections:**

3.24.1900 Election to change retirement allowance.

3.24.1910 Time of election.

3.24.1920 Optional settlement one.

3.24.1930 Optional settlement two.

3.24.1940 Optional settlement three.

3.24.1950 Optional settlement four.

#### **3.24.1900 Election to change retirement allowance.**

In lieu of the retirement allowance for his life alone, a member or retired member may elect, or revoke or change a previous election prior to the previous election, to have the actuarial equivalent of his retirement allowance as of the date of retirement applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in this Part 19.

(Prior code § 2904.146.)

#### **3.24.1910 Time of election.**

Such election, revocation or change of election shall be made prior to the making of the first payment on account of any retirement allowance. If the member retired or retires before February 1, 1965, and died or dies after retirement but within thirty days from the date upon which his election or changed election is received at the office of this system, his election is of no effect, and his death shall be considered as that of a member before retirement unless the board, upon its determination that the election would have been received at the office of this system more than thirty days prior to the death but for circumstances not within the control of the member and not based upon any consideration of health, family relationship or other consideration personal to the member, accepts the election. If, however, the member retired or retires on or after February 1, 1965, his subsequent death, regardless of how soon it occurs after his retirement or after his election or after receipt of his election shall not affect his prior election, and his death shall be deemed to have occurred after his retirement.

(Prior code § 2904.147.)

**3.24.1920 Optional settlement one.**

Optional settlement one consists of the right to have a retirement allowance paid such member until his death and if he dies before he receives in annuity payments the amount of his accumulated contributions at retirement, to have the balance at death paid to his beneficiary or estate.

(Prior code § 2904.148.)

**3.24.1930 Optional settlement two.**

Optional settlement two consists of the right to have a retirement allowance paid him until his death and thereafter to his beneficiary for life.

(Prior code § 2904.149.)

**3.24.1940 Optional settlement three.**

Optional settlement three consists of the right to have a retirement allowance paid him until his death and thereafter to have one-half of his retirement allowance paid to his beneficiary for life.

(Prior code § 2904.150.)

**3.24.1950 Optional settlement four.**

Optional settlement four consists of such other benefits as are the actuarial equivalent of his retirement allowance, that he may select subject to the approval of the board. However, the actuarial equivalent of benefits under this optional settlement payable to the member's beneficiary shall not exceed the actuarial equivalent of the benefits which would be payable to that beneficiary if the member had elected optional settlement two.

(Prior code § 2904.151.)

**Part 20  
DEATH**

**Sections:**

- 3.24.2000 Death benefits - Conditions.
- 3.24.2010 Basic death benefit - Designated.
- 3.24.2020 Basic death benefits - Election procedures.
- 3.24.2030 Payment on death of one receiving retirement allowance.
- 3.24.2040 Death prior to retirement - Payment to spouse, children or estate.

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**3.24.2000 Death benefits - Conditions.**

Upon the death, before the effective date of his retirement or before his retirement is approved, whichever is the later, of a member while in the city service, or within four months after discontinuance of city service, provided he has not been paid more than one-fourth of his accumulated normal

contributions, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of city service, this system is liable for a death benefit, payable to his estate or to his beneficiary. Upon the death, before the effective date of his retirement or before his retirement is approved, whichever is the later, of a member under circumstances in which this system is not so liable for the death benefit, this system is liable for a limited death benefit which consists only of accumulated contributions of the member, payable to his estate or his beneficiary.

(Prior code § 2904.152.)

### **3.24.2010 Basic death benefit - Designated.**

The basic death benefit shall consist of:

- A. His accumulated contributions;
- B. An amount provided from contributions by the city equal to one-twelfth of the annual compensation earnable by the deceased member during the twelve months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed one-half of such compensation.

(Prior code § 2904.153.)

### **3.24.2020 Basic death benefits - Election procedures.**

A. A member may elect or by a writing filed with the board to have all or part of the basic death benefit paid in monthly installments, fixed in number or amount and not involving life contingency, subject to such rules as the board may adopt. Regular interest shall be credited on the unpaid balance of benefits payable.

B. If a member dies without having made an election under subsection A. of this section, his beneficiary, after the death of the member and prior to the payment to him of the basic death benefit or any part thereof, may elect by a writing filed with the board to have the basic death benefit paid to him in the manner provided in subsection A. of this section.

C. When an election has been made to have the basic death benefit paid in accordance with subsection A. of this section, the first of such installments shall be paid on the first day of the month next following the date when the basic death benefit would otherwise be payable, and one of such installments shall be paid on the first day of each month thereafter. Such monthly installments shall be the actuarial equivalent of the portion of the basic death benefit to be paid in installments on the date that such basic death benefit would otherwise be payable.

D. The board may provide that any election by a member or by a beneficiary under the provisions of this section is void if the amount of this monthly installment is less than the minimum amount fixed by the board.

(Prior code § 2904.154.)

### **3.24.2030 Payment on death of one receiving retirement allowance.**

Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his estate or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of five hundred dollars, to be provided from



contributions by the city.

(Prior code § 2904.155.)

### **3.24.2040 Death prior to retirement - Payment to spouse, children or estate.**

A. Upon the death while in city service and before the effective date of his retirement of a member who has attained the minimum age for voluntary service retirement applicable to him at the time of his death and who is credited with twenty or more years of city service, a monthly allowance equal to one-half of the unmodified retirement allowance which the member would have been entitled to receive if he had retired for service on the date of his death shall be payable as follows:

1. If the deceased member was a male and is survived by a surviving wife, said monthly allowance shall be paid to his surviving wife for as long as she lives; or
2. If the deceased member was a female and is survived by a surviving husband, said monthly allowance shall be paid to the surviving husband for as long as he lives; or
3. If the deceased member is not survived by either a surviving wife or surviving husband, but is survived by a surviving unmarried child or children under the age of eighteen years, said monthly allowance shall be paid to such of his or her said children as are both unmarried and under the age of eighteen years, share and share alike, until each has either married or attained the age of eighteen years, whichever is the earlier; provided, that no child shall be entitled to or be paid any allowance under this section after marrying or attaining the age of eighteen years.
4. If the deceased member is survived by a surviving wife or surviving husband and such surviving wife or surviving husband subsequently dies before all children of the deceased member shall have either married or attained the age of eighteen years, said monthly allowance shall then be paid to such of his said children, if any, as are unmarried and under the age of eighteen years, share and share alike, until each has either married or attained the age of eighteen years; provided, that no child shall be entitled to or be paid any allowance after marrying or attaining the age of eighteen years.
5. If the deceased member is not survived by a surviving wife or surviving husband or by any surviving children who are unmarried and under the age of eighteen years, no monthly allowance shall be payable under this section.

B. The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving wife or surviving husband, or, if there is no surviving wife or surviving husband, all of the surviving children, if any, who qualify for said monthly allowance, may elect, before any monthly allowance is paid to any person under this section, to receive said basic death benefit in lieu of said monthly allowance, in which event the basic death benefit shall be paid to whomsoever is entitled to the same and no allowance shall be paid to any person under this section.

C. If the total of all monthly allowances paid or payable under this section is less than the basic death benefit which would have been otherwise payable on account of the member's death, the amount of such basic death benefit less the total amount of all allowances paid under this section shall be paid in a lump sum to the surviving children, if any, of the deceased member, share and share alike, or, if there are no such children, to the estate of the person last receiving said allowance.

D. The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits which would otherwise be payable, and shall charge any such excess against the contributions of the city so that there shall be no increase in contributions of the members by reason of benefits paid pursuant to this section.

E. As used in this section, a "surviving wife" means a wife who was married to the deceased member at the time of the member's death and for at least one year immediately preceding his death, a "surviving husband" means a husband who was married to the deceased member at the time of the member's death and for at least one year immediately preceding the member's death, and "child" includes a posthumously born child of the deceased member.

(Prior code § 2904.156.)

## **Part 21**

### **SPECIAL BENEFITS FOR CERTAIN FORMER HEALTH DEPARTMENT EMPLOYEES**

#### **Sections:**

- 3.24.2050 Option for special benefits - Conditions.
- 3.24.2060 Special retirement allowance.
- 3.24.2070 Basic death benefit.
- 3.24.2080 Death benefit where deceased had twenty years' service and was at least fifty-five years old.
- 3.24.2090 Discontinuance of service - Election to leave accumulated contributions in fund.
- 3.24.2100 Reentry into city service.
- 3.24.2110 Additional costs to be borne by city.
- 3.24.2120 Reference to other parts or sections.

#### **3.24.2050 Option for special benefits - Conditions.**

A. Subject to the conditions, limitations, restrictions and requirements hereinafter set forth or contained in this section or in other sections of this Part 21, any person employed on June 30, 1968, in the city's health department who on July 1, 1968 was employed by the county of Santa Clara in the Santa Clara County health department shall have an option to elect to obtain the special benefits provided for in this part, in lieu of any other rights or benefits provided by other provisions of this part, if all of the following requirements and conditions are met and satisfied:

1. Such person was on June 30, 1968, a member of this retirement system; and
2. Such person's employment in the health department of the city was terminated, from any cause, on June 30, 1968; and
3. At the time of termination of said person's employment in said health department of the city, such person had standing to his credit in this retirement system accumulated contributions of five hundred dollars or more; and
4. Such person shall not have withdrawn from the retirement fund pursuant to Section 3.24.510 any portion of his accumulated contributions or, if he shall have withdrawn any such accumulated contributions pursuant to such Section 3.24.510, he repays to the secretary, for deposit in the retirement fund, at the time he exercises the option herein granted to him, an amount of money equal to

all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510; and

5. Such person shall not have retired, nor shall have received any retirement benefits, pursuant to the provisions of this retirement system.

B. No such person to whom such option is hereinabove given shall be governed by the provisions of this Part 21, nor be entitled to any of the rights or benefits provided for in this Part 21, unless he exercises such option in the manner and within the time specified in this section, and no later.

C. Each such person who exercises said option within the time and in the manner specified in this section shall on and after the exercise of such option be governed by the provisions of this Part 21, and be entitled to the rights and benefits provided for in this part, subject to the abovementioned conditions, limitations, restrictions, and requirements, in lieu of being governed by any other provision of this chapter and in lieu of being entitled to any other rights or benefits provided by other provisions of Chapter 3.24.

D. Each person who is given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement on a form to be furnished to him on his request by said secretary, declaring that he elects to exercise said option, and must in addition, if he shall have already withdrawn any accumulated contributions pursuant to Section 3.24.510, pay to the said secretary for redeposit in the retirement fund any and all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510. Said statement shall be filed and said moneys shall be paid as aforesaid on or before, and no later than December 31, 1969.

E. Upon filing said written statement and payment of such money in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his said option.

F. Each person who is eligible for and who exercises the abovementioned option in the time and manner specified in this section shall continue to be a member of the retirement system established by this chapter, but shall be entitled only to the allowance and benefits provided for in this Part 21, and to no other benefits or allowances.

(Prior code § 2904.160.)

### **3.24.2060 Special retirement allowance.**

A. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050 and such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until terminated by his retirement, either for services or for disability, under and pursuant to a retirement plan or system of the county, then in that event such person, upon being so retired from county service, shall be deemed to have retired for the same cause from city service, as of the day of his retirement from county service.

B. Upon such retirement from city service, such person shall be entitled to receive, and shall be paid, from the retirement fund established by this retirement plan or system, a monthly service retirement allowance or, if his retirement from county service is for disability, a monthly disability retirement allowance. Such monthly service retirement or monthly disability retirement allowance, as the case may be, shall be an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to any applicable county retirement plan or system, will make the total amount of such city allowance and county allowance equal to the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such person would be entitled to receive under and pursuant to the provisions of this

retirement system (other than the provisions of this Part 21), as it existed on June 30, 1968, if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system or plan and if such county service had been rendered for the city at the same rate of compensation as that paid him by the county for such service.

C. In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any option, settlement provision or provisions existing in either the city's retirement system or in the county's retirement system.

However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2060 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.

D. If after retiring from county and city service as aforesaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into county service, and except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county service, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his retirement.

E. The provisions of this section shall not be applicable, and a person shall have no rights thereunder, if such person's employment with the county, commenced on July 1, 1968, is terminated by means for any reason other than service retirement or disability retirement, even though at the time of termination of such county service, or subsequent thereto, such person is or becomes entitled to a retirement allowance or any other benefit under the county's retirement system or plan.

(Prior code § 2904.161.)

### **3.24.2070 Basic death benefit.**

A. In each of the following situations, to wit:

1. Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until termination by his death before retirement and while in county service; or

2. Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and such person subsequently retires from city service pursuant to the provisions of Section 3.24.2060 and then dies within four months from and after the effective date of his said retirement without having received from the city, for or because of such retirement, benefits or allowances totaling more than one-quarter of his total accumulated contributions in the retirement system; or

3. Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and such person's service with and for the county of Santa Clara is subsequently discontinued by means other than retirement, because of physical or mental incapacity for the performance of duty, and such discontinuance and incapacity continues without interruption from the time of his discontinuance of county service until his death, and such person has not withdrawn any of his accumulated contribution from either the county's or the city's retirement system; such person's designated beneficiary, or his estate if no beneficiary shall have been designated, shall be entitled to receive, and shall be paid, from the retirement fund established by the provisions of this chapter, as a death benefit, the following sums of money:

- a. All of such person's accumulated contributions, if any, in this retirement system; and
- b. An amount of money equal to one-twelfth of such person's annual compensation during the twelve months immediately preceding the termination of his service with and for the county of Santa Clara, multiplied by the total number of completed years of service for which he is entitled to credit under his retirement system and under said county's retirement system, but not to exceed a maximum of one-half of such annual compensation, reduced by the amount of death benefit, excluding return of accumulated contributions paid or payable to such beneficiary and/or estate under the county's retirement system.

B. Subject to the provisions of Section 3.24.2020, the person because of whose death such death benefit is payable may elect prior to his death, or his beneficiary may elect after his death, to have said death benefit paid in installments as provided in Section 3.24.2020 of this chapter.

C. In no event shall any beneficiary, estate or other person be entitled to any payments under the provisions of this section if any person is paid or becomes entitled to any allowance or benefits under the provisions of Section 3.24.2080.

(Prior code § 2904.162.)

**3.24.2080 Death benefit where deceased had twenty years' service and was at least fifty-five years old.**

A. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in such Section 3.24.2050, and if in addition such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until terminated by his death before retirement and while in county service, and if in addition such person at the time of his said death had already attained the age of fifty-five years and was entitled to credit, under the retirement system of the county of Santa Clara and under this retirement system for a total of twenty or more years of county and city service, then in that event a monthly allowance equal to one-half of the monthly service retirement allowance which such person would have been entitled to receive pursuant to the provisions of Section 3.24.2060 from the retirement fund established by this retirement plan or system if as of the date of his death he had retired from county and city service pursuant to the provisions of said Section 3.24.2060, shall be paid to the following persons, as follows:

1. If the abovementioned deceased person leaves a surviving spouse, to his surviving spouse for as long as such surviving spouse lives or until such surviving spouse remarries, whichever is earlier; and thereafter, collectively to those surviving children, if any, of the abovementioned deceased person who are under the age of eighteen years and unmarried until all such children attain the age of eighteen years, become married or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies;

2. If the abovementioned deceased person leaves no surviving spouse, but leaves surviving

unmarried children under the age of eighteen years, collectively to those surviving unmarried children who are under the age of eighteen years until all such children become married, attain eighteen years of age or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies.

B. If the abovementioned deceased person leaves no surviving spouse and no unmarried children under the age of eighteen years at the time of his death, no allowance shall be payable or paid under or pursuant to the provisions of this section.

C. Any allowance payable or paid under or pursuant to the provisions of this section shall be in lieu of any benefits payable under or pursuant to the provisions of Section 3.24.2070; however, a person, or such person's guardian, qualifying for an allowance under this section may elect, before receiving any such allowance, to receive the benefits payable under Section 3.24.2070 in lieu of receiving or being entitled to receive any allowance or allowances under this section.

D. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the abovementioned deceased person for at least one year immediately prior to the deceased person's death, and "surviving child" includes a surviving posthumously born child.

E. If, after all payments to which any person or persons may be entitled under the above provisions of this section have been paid, the total of such payments made under the above provisions of this section are less than the basic death benefit which would otherwise have been payable under Section 3.24.2070 because of said person's death, then in that event the amount of such basic death benefit, less the amount of all payments made under and pursuant to this section, shall be paid in a lump sum as follows:

1. If the person last entitled to the allowance provided by this section was the surviving spouse of the abovementioned deceased person, and such surviving spouse has remarried and is alive, such sum shall be paid to such remarried spouse;

2. Otherwise, to the surviving children of the abovementioned deceased person, share and share alike, or if there are no surviving children, to the estate of the person last entitled to any allowance under this section.

(Prior code § 2904.163.)

### **3.24.2090 Discontinuance of service - Election to leave accumulated contributions in fund.**

A. 1. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and if in addition such person's employment with the county of Santa Clara is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the administering board of the retirement system of the county to have resulted in permanent discontinuance (and in such case, as of the date of the determination by said board that the discontinuance is permanent), or if the disability retirement of such person under both the county's retirement system and under the city's retirement system is followed by cessation of the disability and cancellation of the disability allowance such person was receiving from the county retirement system and also the disability allowance such person was receiving from this retirement system and such person does not reenter county or city service or employment, and if, in addition, the total amount of such person's accumulated contributions standing to his credit at such time in this city's retirement system is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of such right is mailed by this system to such person's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the

retirement fund of this system. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to credit for twenty years of service with the city. An election to allow all or part of one's accumulated contributions to remain in the retirement fund established by this system may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn.

2. Upon withdrawal of any accumulated contributions, the member withdrawing the same shall lose, and shall not be entitled to any credit for any city service on account of which such withdrawn contributions had theretofore been paid into this system's retirement fund. In determining the city service for which a member is no longer entitled to credit upon withdrawal of all or part of his contributions, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest city service rendered by such person to the city, or on account of his earliest such service if so requested by such person at the time he withdraws his contributions.

3. Such person may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for city service during such periods of time as may be designated by him without withdrawing any contributions paid by him because of such city service, provided he retains credit for not less than five years of continuous city service; and in such event, determining his eligibility for or the amount of any benefits to which he may become entitled, he shall be given no credit for any service so relinquished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 or Section 3.24.740.

4. If such person does elect in the above circumstances to allow his accumulated contributions to remain in the retirement fund established by this system, his membership in this system shall be deemed to continue, and he shall be entitled to retirement for service or disability upon satisfying the requirements for such retirement as contained in other parts of this chapter, as such parts exist and are worded on July 1, 1968, except that he shall not be subject to the minimum service requirements. After qualification of such member for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and city service standing to his credit at the time of retirement and on the city employer contributions held for him, and calculated in the manner provided by the provisions of other parts of this chapter, as they read on June 30, 1968, for determination of the amount of such allowance for other members of this system except that the provisions of this chapter for minimum service and disability retirement allowances do not apply to him unless he meets the minimum service requirements therefor. In the event such member should die before retiring pursuant to the provisions of this section, a death benefit equal to his accumulated contributions in this retirement system shall be paid to his designated beneficiary or to his estate if he fails to designate a beneficiary, unless a death benefit is payable under the provisions of Section 3.24.2070, in which latter event the death benefit payable under Section 3.24.2070 shall be deemed to be in lieu of any death benefit provided for herein and no death benefit shall be payable under the provisions of this section.

B. 1. In the event that the retirement system of the county of Santa Clara should also give to said member the right, in the above-specified circumstances, to continue to be a member of the county retirement system and to subsequently become entitled to service or disability retirement under the county system at the same time that such person could retire under the provisions of subsection A. of this section, and if such member should subsequently retire for service or disability under the county's system pursuant to such provisions of the county's retirement system at the same time that he retires under the city's retirement system pursuant to the above provisions of subsection A. of this section, then and in that event the monthly service retirement allowance or monthly disability retirement allowance, as the case may be, which such person shall be entitled to receive from the retirement fund established by this city system shall be, in lieu of the amount hereinabove specified in subsection A., an amount of money which when added to the monthly retirement allowance which such person will be

entitled to receive under and pursuant to the county retirement system, will make the total amount of such city allowance and county allowance equal the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such persons would be entitled to receive under and pursuant to the provisions of subsection A. of this section if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system and if such county service had been rendered for the city at the same rate of compensation as that paid to him by the county for such service.

2 In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any optional settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2090 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.

3. If after retiring from county and city service as aforesaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into county service, and, except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county services, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his first retirement.

(Prior code § 2904.164.)

### **3.24.2100 Reentry into city service.**

A. If after retiring from city service under and pursuant to the provisions of Section 3.24.2060 or 3.24.2090 of this part such retired person should again become an officer or employee of the City of San José, other than as a member of the city council or member of a city board or commission, his city retirement and city retirement allowance shall cease as of the date he is reemployed by the city, and, except to the extent hereinafter otherwise expressly provided in this section, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional settlement provision, or any other right under the provisions of this chapter. If such person's new employment with the city is in a position which entitles him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if he should subsequently retire under and pursuant to the provisions of other parts of this chapter, and if at the time he so retires pursuant to provisions of other parts he is receiving or is or becomes entitled to receive a retirement allowance from the county of Santa Clara because of county service rendered after July 1, 1968, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system, while he is receiving a retirement allowance from the county of Santa Clara, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2060.



The last-mentioned election must be made prior to the time he is granted retirement.

B. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in Section 3.24.2050, but such person's employment with the county of Santa Clara does not continue without interruption from July 1, 1968 until terminated by his retirement either for service or disability under and pursuant to the retirement plan or system of said county, and such person should subsequently again become an officer or employee of the city, he shall thenceforth have no rights whatsoever to any allowances or benefits under the provisions of this Part 21, except such as may hereinafter be expressly granted by the provisions of this section. If such person's said new employment with the city is in a position which entitles him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided, and excepting, however, that if such person's employment with the county of Santa Clara had been discontinued under and by virtue of circumstances or reasons specified in Section 3.24.2090, and if in addition upon so discontinuing his employment with the county such person was entitled to continue and has continued his membership in the county's retirement system as described in subsection B. of Section 3.24.2090, and if in addition such person, at the same time that he should subsequently retire from city service under the retirement system established by this chapter should also be eligible to retire and does retire for or from county service under the county's retirement system, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system while he is receiving a retirement allowance from the county, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2060. The last-mentioned election must be made prior to the time he is granted retirement.

(Prior code § 2904.165.)

### **3.24.2110 Additional costs to be borne by city.**

All additional costs incurred by this retirement system because of any special benefits provided by the provisions of this Part 21 to any city officers or employees or former officers or employees over and above such benefits as would be provided to such employees by provisions of other parts of this chapter if this Part 21 has not been adopted shall be borne and paid for by the city.

(Prior code § 2904.167.)

### **3.24.2120 Reference to other parts or sections.**

Whenever reference is made by any of the provisions of this Part 21 to any other part, or to any sections contained in any other part of this chapter, such reference shall be deemed to be made to such other part or section or sections as it or they existed on June 30, 1968.

(Prior code § 2904.166.)

## **Part 22**

## **SPECIAL BENEFITS FOR CERTAIN FORMER COMMUNICATIONS DEPARTMENT EMPLOYEES**

### **Sections:**

3.24.2150 Option for special benefits.

3.24.2160 Special retirement allowance.

## **EXHIBIT B**

3.24.2170 Basic death benefit.

3.24.2180 Death benefit where deceased had twenty years' service and was at least fifty-five years old.

3.24.2190 Discontinuance of service - Election to leave accumulated contributions in fund.

3.24.2200 Reentry into city service.

3.24.2210 Return to city employment.

3.24.2220 Retirement at age fifty-five - Less than five years of county service.

3.24.2230 Additional costs to be borne by city.

3.24.2240 Reference to other parts or sections.

**3.24.2150 Option for special benefits.**

A. Subject to the conditions, limitations, restrictions and requirements hereinafter set forth or contained in this section or in other sections of this Part 22, any person employed on September 8, 1974, in the city's communications department who on September 9, 1974, was employed by the county of Santa Clara in the Santa Clara County communications department shall have an option to elect to obtain the special benefits provided for in this part, in lieu of any other rights or benefits provided by other provisions of this part, if all of the following requirements and conditions are met and satisfied:

1. Such person was on September 8, 1974, a member of this retirement system; and
2. Such person's employment in the communications department of the city was terminated, from any cause, on September 8, 1974; and
3. At the time of termination of said person's employment in the communications department of the city such person had standing to his credit in this retirement system accumulated contributions of five hundred dollars or more; and
4. Such person shall not have withdrawn from the retirement fund pursuant to Section 3.24.510 any portion of his accumulated contributions, or, if he shall have withdrawn any such accumulated contributions pursuant to such Section 3.24.510, he repays to the secretary, for deposit in the retirement fund, at the time he exercises the option herein granted to him, an amount of money equal to all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510; and
5. Such person shall not have retired, nor shall have received any retirement benefits, pursuant to the provisions of this retirement system.

B. No such person to whom such option is hereinabove given shall be governed by the provisions of this Part 22; nor be entitled to any of the rights or benefits provided for in this Part 22 unless he exercises such option in the manner and within the time specified in this section and no later.

C. Each such person who exercises said option within the time and in the manner specified in this section shall on and after the exercise of such option be governed by the provisions of this Part 22, and

be entitled to the rights and benefits provided for in this part, subject to the abovementioned conditions, limitations, restrictions and requirements, in lieu of being governed by any other provision of this chapter and in lieu of being entitled to any other rights or benefits provided by other provisions of this chapter.

D. Each person who is given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement on a form to be furnished to him on his request by said secretary, declaring that he elects to exercise said option, and must in addition, if he shall have already withdrawn any accumulated contributions pursuant to Section 3.24.510, pay to the said secretary, for redeposit in the retirement fund, any and all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510. Said statement shall be filed and said moneys shall be paid as aforesaid on or before and no later than December 31, 1974.

E. Upon filing such written statement and payment of such money in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his option.

F. Each person who is eligible for and who exercises the abovementioned option in the time and manner specified in this section shall continue to be a member of the retirement system established by this chapter, but shall be entitled only to the allowance and benefits provided for in this Part 22, and to no other benefits or allowances.

(Prior code § 2904.168.)

### **3.24.2160 Special retirement allowance.**

A. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until termination by his retirement, either for service or for disability, under and pursuant to a retirement plan or system of said county, then in that event such person upon being so retired from county service shall be deemed to have retired, for the same cause, from city service, as of the day of his retirement from county service.

B. Upon such retirement from city service, such person shall be entitled to receive, and shall be paid, from the retirement fund established by this retirement plan or system, a monthly service retirement allowance or, if his retirement from county service is for disability, a monthly disability retirement allowance. Such monthly service retirement or monthly disability retirement allowance, as the case may be, shall be an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to any applicable county retirement plan or system, will make the total amount of such city allowance and county allowance equal to the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such person would be entitled to receive under and pursuant to the provisions of this retirement system (other than the provisions of this Part 22), as it existed on September 8, 1974, if such person were entitled to have credited to him, as city service, all county service for which he is entitled to credit under the county retirement system or plan and if such county service had been rendered for the city at the same rate of compensation as that paid him by the county for such service.

C. In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of such person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any option, settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement

system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2160 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of Part 19 of this chapter.

D. If after retiring from county and city service as aforesaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into county service, and except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county service, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his retirement.

E. The provisions of this section shall not be applicable, and a person shall have no rights thereunder, if such person's employment with the county commenced on September 9, 1974, is terminated by means or for any reason other than service retirement or disability retirement, even though at the time of termination of such county service, or subsequent thereto, such person is or becomes entitled to a retirement allowance or any other benefit under the county's retirement system or plan.

(Prior code § 2904.169.)

### **3.24.2170 Basic death benefit.**

A. In each of the following situations:

1. Where a person who is eligible for and entitled to the option specified in Section 3.24.2150, and such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until termination by his death before retirement and while in the county service; or

2. Where a person is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person subsequently retires from city service pursuant to the provisions of Section 3.24.2160 and then dies within four months from and after the effective date of this said retirement without having received from the city, for or because of such retirement, benefits or allowances totaling more than one-quarter of his total accumulated contributions in the retirement system; or

3. Where a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person's service with and for the county of Santa Clara is subsequently discontinued by means other than retirement, because of physical or mental incapacity for the performance of duty, and such discontinuance and incapacity continues without interruption from the time of his discontinuance of county service until his death, and such person has not withdrawn any of his accumulated contribution from either the county's or the city's retirement system; such person's designated beneficiary, or his estate if no beneficiary shall have been designated, shall be entitled to receive, and shall be paid, from the retirement fund established by the provisions of this part, as a death benefit, the following sums of money:

a All of such person's accumulated contributions, if any, in this retirement system; and

b. An amount of money equal to one-twelfth of such person's annual compensation during the twelve months immediately preceding the termination of his service with and for the county of Santa Clara, multiplied by the total number of completed years of service for which he is entitled to credit under his retirement system and under said county's retirement system, but not to exceed a maximum of one-half of such annual compensation, reduced by the amount of death benefit, excluding return of accumulated contributions, paid or payable to such beneficiary and/or estate under the said county's retirement system.

B. Subject to the provisions of Section 3.24.2020, the person because of whose death such death benefit is payable may elect prior to his death, or his beneficiary may elect after his death, to have said death benefit paid in installments as provided in Section 3.24.2020 of this chapter.

C. In no event shall any beneficiary, estate or other person be entitled to any payments under the provisions of this section if any person is paid or becomes entitled to any allowance or benefits under the provisions of Section 3.24.2180.

(Prior code § 2904.170.)

**3.24.2180 Death benefit where deceased had twenty years' service and was at least fifty-five years old.**

A. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in such Section 3.24.2150, and if in addition such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until terminated by his death before retirement and while in county service, and if in addition such person at the time of his said death had already attained the age of fifty-five years and was entitled to credit, under the retirement system of the county of Santa Clara and under this retirement system, for a total of twenty or more years of county and city service, then in that event a monthly allowance equal to one-half of the monthly service retirement allowance which such person would have been entitled to receive pursuant to the provisions of Section 3.24.2160 from the retirement fund established by this retirement plan or system if as of the date of his death he had retired from county and city service pursuant to the provisions of said Section 3.24.2160, shall be paid to the following persons, as follows:

1. If the abovementioned deceased person leaves a surviving spouse, to his surviving spouse for as long as such surviving spouse lives or until such surviving spouse remarries, whichever is earlier; and thereafter, collectively to those surviving children, if any, of the abovementioned deceased person who are under the age of eighteen years and unmarried until all such children attain the age of eighteen years, become married or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies;

2. If the abovementioned deceased person leaves no surviving spouse, but leaves surviving unmarried children under the age of eighteen years, collectively to those surviving unmarried children who are under the age of eighteen years until all such children become married, attain eighteen years of age or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies.

B. If the abovementioned deceased person leaves no surviving spouse and no unmarried children under the age of eighteen years at the time of his death, no allowance shall be payable or paid under or pursuant to the provisions of this section.

C. Any allowance payable or paid under or pursuant to the provisions of this section shall be in lieu of any benefits payable under or pursuant to the provisions of Section 3.24.2170; however, a person, or such person's guardian, qualifying for an allowance under this section may elect, before

receiving any such allowance, to receive the benefits payable under Section 3.24.2170 in lieu of receiving or being entitled to receive any allowance or allowances under this section.

D. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the abovementioned deceased person for at least one year immediately prior to the deceased person's death, and "surviving child" includes a surviving posthumously born child.

E. If, after all payments to which any person or persons may be entitled under the above provisions of this section have been paid, the total of such payments made under the above provisions of this section are less than the basic death benefit which would otherwise have been payable under Section 3.24.2170 because of said person's death, then in that event the amount of such basic death benefit, less the amount of all payments made under and pursuant to this section, shall be paid in a lump sum as follows:

1. If the person last entitled to the allowance provided by this section was the surviving spouse of the abovementioned deceased person, and such surviving spouse has remarried and is alive, such sum shall be paid to such remarried spouse;

2. Otherwise, to the surviving children of the abovementioned deceased person, share and share alike, or if there are no surviving children, to the estate of the person last entitled to any allowance under this section.

(Prior code § 2904.171.)

### **3.24.2190 Discontinuance of service - Election to leave accumulated contributions in fund.**

A. 1. If a person who is eligible for and entitled to the option specified in said Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and if, in addition, such person's employment with the county of Santa Clara is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the administering board of the retirement system of the county to have resulted in permanent discontinuance (and in such case, as of the date of the determination by said board that the discontinuance is permanent), or if the disability retirement of such person under both the county's retirement system and under the city's retirement system is followed by cessation of the disability and cancellation of the disability allowance such person was receiving from the county retirement system and also the disability allowance such person was receiving from this retirement system and such person does not reenter county or city service or employment, and if in addition the total amount of such person's accumulated contributions standing to his credit at such time in this city's retirement system is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of such right is mailed by this system to such person's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the retirement fund of this system. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to credit for twenty years of service with the city. An election to allow all or part of one's accumulated contributions to remain in the retirement fund established by this system may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn.

2. Upon withdrawal of any accumulated contributions, the member withdrawing the same shall lose, and shall not be entitled to any credit for, any city service on account of which such withdrawn contributions had theretofore been paid into this system's retirement fund. In determining the city service for which a member is no longer entitled to credit upon withdrawal of all or part of his

contributions, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest city service rendered by such person to the city, or on account of his earliest such service if so requested by such person at the time he withdraws his contributions.

3. Such person may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for city service during such periods of time as may be designated by him without withdrawing any contributions paid by him because of such city service, provided he retains credit for not less than five years of continuous city service; and in such event, in determining his eligibility for or the amount of any benefits to which he may become entitled, he shall be given no credit for any service so relinquished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 or Section 3.24.740.

4. If such person does elect, in the above circumstances, to allow his accumulated contributions to remain in the retirement fund established by this system, his membership in this system shall be deemed to continue, and he shall be entitled to retirement for service or disability upon satisfying the requirements for such retirement as contained in other parts of this chapter, as such parts exist and are worded on September 9, 1974, except that he shall not be subject to the minimum service requirements. After qualification of such member for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and city service standing to his credit at the time of retirement and on the city employer contributions held for him, and calculated in the manner provided by the provisions of other parts of this chapter, as they read on September 8, 1974, for determination of the amount of such allowance for other members of this system except that the provisions of this chapter for minimum service and disability retirement allowances do not apply to him unless he meets the minimum service requirements therefor. In the event such member should die before retiring pursuant to the provisions of this section, a death benefit equal to his accumulated contributions in this retirement system shall be paid to his designated beneficiary, or to his estate if he fails to designate a beneficiary, unless a death benefit is payable under the provisions of Section 3.24.2170 in which latter event the death benefit payable under Section 3.24.2170 shall be deemed to be in lieu of any death benefit provided for herein and no death benefit shall be payable under the provisions of this section.

B. 1. In the event that the retirement system of the county of Santa Clara should also give to said member the right in the above-specified circumstances, to continue to be a member of the county retirement system and do subsequently become entitled to service or disability retirement under the county system at the same time that such person could retire under the provisions of subsection A. of this section, and if such member should subsequently retire for service or disability under the county's system pursuant to such provisions of the county's retirement system at the same time that he retires under the city's retirement system pursuant to the above provisions of subsection A. of this section, then in that event the monthly service retirement allowance or monthly disability retirement allowance, as the case may be, which such person shall be entitled to receive from the retirement fund established by this city system shall be, in lieu of the amount hereinabove specified in subsection A., an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to the county retirement system, will make the total amount of such city allowance and county allowance equal the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such persons would be entitled to receive under and pursuant to the provisions of subsection A. of this section if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system and if such county service had been rendered at the same rate of compensation as that paid to him by the county for such service.

2. In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other

person under any optional settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2190 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.

3. If, after retiring from county and city service as aforesaid, any such person should become reinstated into county service, his city retirement and city requirement allowance shall cease as of the date he is reinstated into county service, and, except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county services, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his first retirement.

(Prior code § 2904.172.)

### **3.24.2200 Reentry into city service.**

A. If after retiring from city service under and pursuant to the provisions of Sections 3.24.2160 or 3.24.2190 such retired person should again become an officer or employee of the City of San José, other than as a member of the city council or member of a city board or commission, his city retirement and city retirement allowance shall cease as of the date he is re-employed by the city, and, except to the extent hereinafter otherwise expressly provided in this section, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional settlement provision, or any other right under the provisions of this chapter. If such person's new employment with the city is in a position which entitles him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if he should subsequently retire under and pursuant to the provisions of other parts of this chapter, and if at the time he so retires pursuant to provisions of such other parts he is receiving or is or becomes entitled to receive a retirement allowance from the county of Santa Clara because of county service rendered after September 9, 1974, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system, while he is receiving a retirement allowance from the county of Santa Clara, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2160. The last-mentioned election must be made prior to the time he is granted retirement.

B. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in Section 3.24.2150, but such person's employment with the county of Santa Clara does not continue without interruption from September 9, 1974, until terminated by his retirement, either for service or disability, under and pursuant to the retirement plan or system of said county, and such person should subsequently again become an officer or employee of the city, he shall thenceforth have no rights whatsoever to any allowances or benefits under the provisions of this Part 22, except such as may hereinafter be expressly granted by the provisions of this section. If such person's said new employment with the city is in a position



entitling him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if such person's employment with the county of Santa Clara had been discontinued under and by virtue of circumstances or reasons specified in Section 3.24.2190, and if in addition upon so discontinuing his employment with the county such person was entitled to continue and has continued his membership in the county's retirement system as described in subsection B. of Section 3.24.2190, and if in addition such person, at the same time that he should subsequently retire from city service under the retirement system established by this chapter should also be eligible to retire and does retire for or from county service under the county's retirement system, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system while he is receiving a retirement allowance from the county, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2160. The last-mentioned election must be made prior to the time he is granted retirement.

(Prior code § 2904.173.)

### **3.24.2210 Return to city employment.**

#### **A. Either:**

1. Any person who is eligible for and entitled to the option specified in Section 3.24.2150 and who exercises such option in the manner and time specified in Section 3.24.2150; or
2. Any person employed on September 8, 1974, in the communications department of the city who on September 9, 1974 was employed in the communications department of the county of Santa Clara, who had five hundred dollars or more of accumulated contributions standing to his credit in this system on September 8, 1974, all of which contributions were withdrawn by such person upon county employment; who is not entitled to service or disability retirement in the county system; and
3. Whose employment with the county of Santa Clara terminated for any reason on or before March 7, 1975, and who returned to city employment on or before March 7, 1975; or
4. Who is laid off from the county and returns to city employment on or before September 8, 1976, shall be entitled to credit under this system for service rendered to the county by contributing, within thirty days after returning to city employment, to this system for such period of county service, an amount of money such person would have been required to contribute to this system had he been a city employee during his period of county employment based upon his county rate of compensation, and his compensation for retirement purposes shall for such period of county service be computed at the rate of pay paid him by the county for such service.

B. In the event any person returns to city service under this section, the other sections of Part 22 shall not apply to him, and he shall have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter, except insofar as additional rights, if any, are given by this Section 3.24.2210.

(Prior code § 2904.174.)

### **3.24.2220 Retirement at age fifty-five - Less than five years of county service.**

A. Any person who is eligible for and entitled to the option specified in Section 3.24.2150 who exercises such option in the manner and time specified in said Section 3.24.2150 whose employment with the county of Santa Clara continues without interruption from September 9, 1974 until he reaches

age fifty-five, who is otherwise eligible to retire for service under and pursuant to a retirement plan or system of the county, except that he does not have five years of county service, who terminates his employment with the county at age fifty-five, shall be deemed to have retired from city service and eligible for service retirement benefits under other parts of this chapter as of the day of such termination, if he contributes, within thirty days after such termination, to this system for his period of county service the amount of money he would have been required to contribute to this system had he been a city employee during his period of county employment based upon his county rate of compensation, and his compensation for retirement purposes shall for such period of county service be computed at the rate of compensation paid him by the county for such service.

B. In the event that such person elects to contribute said amount under the conditions above stated, the other sections of Part 22 shall not apply to him, and he shall have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter, except insofar as additional rights, if any, are given by this section.

(Prior code § 2904.175.)

#### **3.24.2230 Additional costs to be borne by city.**

All additional costs incurred by this retirement system because of any special benefits provided by the provisions of this Part 22 to any city officers or employees or former officers or employees over and above such benefits as would be provided to such employees by provisions of other parts of this chapter if this Part 22 had not been adopted shall be borne and paid for by the city.

(Prior code § 2904.177.)

#### **3.24.2240 Reference to other parts or sections.**

Whenever reference is made by any of the provisions of this Part 22 to any other parts, or to any sections contained in any other part of this chapter, such reference shall be deemed to be made to such other part or section or sections as it or they existed on September 8, 1974.

(Prior code § 2904.176.)

### **Part 23**

## **MEDICAL BENEFITS FOR CERTAIN RETIREES AND SURVIVORS**

#### **Sections:**

- 3.24.2250 Medical benefits for retired members.
- 3.24.2260 Medical benefits for survivors of members.
- 3.24.2270 Requirements for participation in medical insurance plan.
- 3.24.2280 Allocation of costs of providing medical insurance coverage to members or survivors.
- 3.24.2290 Eligible medical plan.

#### **3.24.2250 Medical benefits for retired members.**

Subject to the provisions of this chapter, if a member is retired for service or disability and at the time of such retirement is entitled to credit for fifteen or more years of service, or is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, said member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.24.2270, below.

(Ord. 21763.)

### **3.24.2260 Medical benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving husband, wife, child and/or children, as those terms are defined in Section 3.24.2040 of this chapter, is receiving a monthly survivorship allowance pursuant to Part 20 of this chapter because of the death of a member, and the member either died before receiving retirement pay or was retired for either service or disability, and such member was at the time of death entitled to credit for fifteen or more years of service or was receiving an allowance of at least thirty-seven and one-half percent of final compensation, then in said event, the surviving husband, wife, child and/or children may be entitled to medical insurance coverage in an eligible insurance plan as specified in Section 3.24.2270, below.

(Ord. 21763.)

### **3.24.2270 Requirements for participation in medical insurance plan.**

A. A member, as specified in Section 3.24.2250, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the member satisfies the following requirements:

1. The member retires for service or disability pursuant to the provisions of this chapter; and
2. The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums.

B. A survivor, as specified in Section 3.24.2260, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the following conditions are satisfied:

1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment and was retired pursuant to the provisions of this chapter; and
2. At the time of the member's death, the member and the survivor were enrolled in one of the medical insurance plans sponsored by the city; and
3. The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums.

C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability. A surviving husband or wife shall be eligible for single coverage only, unless at least one unmarried child of the member, or of the member's husband or wife, under the age of eighteen years, is surviving the death of the member; in such case, if at the time of the member's death such child was enrolled in a medical insurance plan sponsored by the city, then the surviving husband or wife shall be eligible for family coverage.

D. As used in this section, "medical insurance plan sponsored by the city" means an eligible

medical plan as described in Section 3.24.2290, below.

E. Notwithstanding the provisions of Sections 3.24.2270.A.1., 2., and 3., and 3.24.2270.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this part, but who, at the time of retirement or death, could not enroll because the benefits provided in this part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.24.2270 and with all other provisions of this part.

(Ords. 21763, 22807.)

### **3.24.2280 Allocation of costs of providing medical insurance coverage to members or survivors.**

Premiums for medical insurance coverage under this part shall be paid as follows:

1. The city shall pay that portion of the premium which represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage for which the member or survivor is eligible and in which the member or survivor enrolls under the provisions of this part, which is available to an employee of the city at such time as said premium is due and owing.

2. Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid by the city. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this chapter.

(Ord. 21763.)

### **3.24.2290 Eligible medical plan.**

For purposes of this part, members or their survivors may secure medical insurance coverage only from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees.

(Ord. 21763.)

## **Part 24**

## **DENTAL BENEFITS FOR RETIRED MEMBERS AND SURVIVORS**

Sections:

- 3.24.2300 Dental benefits for retired members.
- 3.24.2310 Dental benefits for survivors of members.
- 3.24.2320 Requirements for participation in dental insurance plan.
- 3.24.2330 Costs of dental insurance.
- 3.24.2340 Eligible dental plan.

### **3.24.2300 Dental benefits for retired members.**

Subject to the provisions of this chapter, if a member of this system is retired for service or disability and at the time of such retirement is (i) entitled to credit for five or more years of service, or (ii) is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, or (iii) would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member if the workers' compensation offset set forth in Section 3.28.1040 did not apply, then said member may be entitled to dental insurance coverage in an eligible dental plan as specified in this part.

(Ord. 22261.)

### **3.24.2310 Dental benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving husband, wife, child and/or children, as those terms are defined in Section 3.24.2310, is receiving a monthly survivorship allowance pursuant to Part 20 of this chapter because of the death of a member of this system, then said surviving husband, wife, child and/or children may be entitled to dental insurance coverage in an eligible dental plan as specified in this part, if the following conditions are satisfied:

- A. The member either died before receiving retirement pay or was retired for either service or disability; and
- B. Such member was at the time of death:
  - 1. Entitled to credit for five or more years of service; or
  - 2. Was receiving an allowance equal to at least thirty-seven and one-half percent of final compensation; or
  - 3. Would have been receiving an allowance equal to at least thirty-seven and one-half percent of final compensation if the workers' compensation offset set forth in Section 3.28.1040 did not apply.

(Ord. 22261.)

### **3.24.2320 Requirements for participation in dental insurance plan.**

A. A member, as specified in Section 3.24.2300 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the member satisfies the following requirements:

- 1. The member terminates city employment pursuant to the retirement provisions of this chapter; and
- 2. At the time of his or her retirement, the member is enrolled in one of the dental insurance plans sponsored by the city.

B. A survivor of a member, as specified in Section 3.24.2310, above, is eligible to participate in a dental insurance plan sponsored by the city provided that the survivor satisfies the following requirements:

- 1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment pursuant to the retirement provisions of this chapter; and

2 At the time of the member's death, the member and the survivor were enrolled in one of the dental insurance plans sponsored by the city.

C. Notwithstanding the provisions of subsections A. and B. of this section, all retired members and survivors who meet the qualifications set forth in Section 3.24.2300 or Section 3.24.2310 and who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this part.

(Ord. 22261.)

### **3.24.2330 Costs of dental insurance.**

The cost of providing dental insurance coverage as provided in this part shall be borne by and paid from the retirement fund.

(Ord. 22261.)

### **3.24.2340 Eligible dental plan.**

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.

(Ord. 22261.)

## **Chapter 3.28 1975 FEDERATED EMPLOYEES RETIREMENT PLAN**

### **Parts:**

- 1 General Provisions and Definitions
- 2 Administration
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**Part 1**  
**GENERAL PROVISIONS AND DEFINITIONS**

Sections:

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- 3.28.020 Effective date of Chapter 3.28 provisions.
- 3.28.030 Definitions and construction of terms.
  - 3.28.030.01 "Actuarial equivalent."
  - 3.28.030.02 "City."
  - 3.28.030.03 "Benefit."
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- 3.28.030.11 "Final compensation."
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- 3.28.030.21 "Part-time service."
- 3.28.030.22 "Plan year."
- 3.28.030.23 "Prior service".
- 3.28.030.24 "Regular interest".
- 3.28.030.25 "Retirement board".
- 3.28.030.26 "Retirement fund".
- 3.28.030.27 "Retirement system".
- 3.28.030.30 "Mandatory reduction in paid working time"
- 3.28.040 Use of masculine or feminine gender.
- 3.28.050 Overtime excluded in computing compensation.
- 3.28.060 Notices - Deemed effective when.
- 3.28.070 Termination of plan.

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**3.28.010 Plan established - Name - Scope.**

- A. There is hereby established a retirement plan for all persons, hereinafter in this chapter

**EXHIBIT B**



specified, who may become members thereof pursuant to the provisions of this chapter. This plan shall be known as the "1975 Federated City Employees Retirement Plan," and includes all provisions of this Chapter 3.28.

B. Notwithstanding any provision of the code to the contrary, the elements of the retirement plan as set out in Chapters 3.16, 3.20, 3.24 and 3.28 are components of a single retirement system known as the Federated City Employees Retirement Plan.

C. Contributions made by the city and the members of the plan to the retirement fund described in Part 3 of this chapter shall be made for the purpose of distributing to such members or their beneficiaries the corpus and income of the fund in accordance with the terms of this plan.

D. The Federated City Employees Retirement Plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable treasury regulations and other guidance of the internal revenue service. The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.

(Prior code § 2904.1000; Ords. 27838, 28885.)

### **3.28.020 Effective date of Chapter 3.28 provisions.**

The effective date of this Chapter 3.28 and of this retirement plan is and shall be the first day of July, 1975, and the words "effective date of this chapter" or "effective date of this system," as used in this chapter, shall be deemed to mean and refer to said first day of July, 1975.

(Prior code § 2904.1029.)

### **3.28.030 Definitions and construction of terms.**

Unless the context otherwise requires, the definitions and general provisions set forth in this part govern the construction of this Chapter 3.28.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

#### **3.28.030.01 "Actuarial equivalent."**

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted and the regular interest rate fixed by the board.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

#### **3.28.030.02 "City."**

"City" means the City of San José, a municipal corporation of the State of California.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

#### **3.28.030.03 "Benefit."**

"Benefit" means any retirement or survivorship allowance, or the refund of any accumulated contributions, or any money or right to which any person or estate may become entitled under the

provisions of this system.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

#### **3.28.030.04 " Chapter 3.24 retirement system."**

" Chapter 3.24 retirement system," " Chapter 3.24 system" and " Chapter 3.24 plan" each mean the San José Federated City Employees Retirement System set forth in Chapter 3.24 of Title 3 of the San José Municipal Code.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

#### **3.28.030.05 "Compensation."**

A. "Compensation" means the remuneration paid in cash out of funds controlled by the city, plus the monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry and other advantages furnished to a member by the city in payment for the member's services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off or leave of absence.

B. "Compensation" shall include holiday in lieu pay.

C. "Compensation" shall include incentive pay for successful completion, on an annual basis, of training in police anti-terrorist tactics as certified by the police department to the city finance department.

D. "Compensation" shall not include the provision by the city of any medical or hospital service or care plan for its employees, any contribution by the city to meet the premium or charge for such plan, or any payment into any fund to provide any death, retirement or survivorship benefits for employees or their survivors, or to provide any health or welfare benefits for employees, or any payment by the city of the employee portion of any taxes imposed by federal law, or any payment made by the city to the federal or state government for any social security system or program.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 26918.)

#### **3.28.030.06 "Compensation earnable."**

A. "Compensation earnable" by a member employed on a full-time basis means the average monthly (or biweekly, if compensation is paid on a biweekly basis by the city) compensation of a member, as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay.

B. "Compensation earnable" by a member employed to render part-time service means the monthly (or biweekly, if compensation is paid biweekly) compensation actually paid to such member for such part-time service.

C. The computation for time during which a member is absent shall be based on the compensation earnable by the member at the beginning of the absence, and the computation for time prior to entering federated city service shall be based on the compensation earnable by the member in the position first held by him or her in such service.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.07 "Continued service."**

"Continued service," as applied to prior service, means all prior service, regardless of interruptions; but, as to current service, it means employment in federated city service uninterrupted by a continuous absence of more than three years. The period for which a member receives credit for service under Section 3.28.630 while absent on military service shall be excluded in calculating such continuous absence.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.08 "Current service."**

"Current service" means all city service rendered by a member on or after July 1, 1975, for which the member is entitled to credit under the provisions of this system.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.09 "Employee."**

"Employee" means any person in the employ of the city, or who holds a city office, whose compensation, or at least that portion of that compensation which is provided by the city, is paid out of funds directly controlled by the city. The word "employee" shall be deemed to include the word "officer."

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.10 "Federated city service."**

"Federated city service" means the service described and defined as such in Part 5 of this chapter.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.11 "Final compensation."**

A. For a member who separated from city service prior to July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of three consecutive years of federated city service, including time prior to entering federated city service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete three consecutive years.

B. For a member who separated from city service on or after July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of twelve consecutive months of federated city service, including time prior to entering federated city service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete twelve consecutive months; provided, however, that such final compensation shall not exceed one hundred eight percent of the second-highest average annual compensation earnable by the member during any twelve consecutive months, excluding all of the months used to determine the highest average annual compensation earnable; and provided further if the member has been subject to a mandatory reduction in paid working time, the calculation for compensation earnable shall include the compensation that would have been earnable had the member not been subject to a mandatory reduction in paid working time.

C. For the purposes of this chapter, periods of service separated by breaks in service may be

aggregated to constitute a period of three consecutive years or twelve consecutive months, as applicable, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in computation of final compensation. If a break in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in computation of final compensation.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 26828, 28603.)

### **3.28.030.12 "Fiscal year."**

On and after July 1, 1975, the "fiscal year," for purposes of this chapter, is any year commencing on July 1st and ending on June 30th next following.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.13 "Funds directly controlled by the city."**

"Funds directly controlled by the city" include funds deposited in and disbursed from the city treasury in payment of compensation regardless of their source.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.14 "Holiday in lieu pay."**

"Holiday in lieu pay" means remuneration paid by the city to a member, as a percentage of the member's compensation, in lieu of holiday benefits provided to other city employees.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.15 "Member."**

"Member" means a person who becomes a member of this system pursuant to the provisions of Part 4 of this chapter whose membership shall not have been terminated pursuant to provisions of this chapter. No other persons are members.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.16 "Member's accumulated contributions."**

"Member's accumulated contributions" means the sum of a member's accumulated normal contributions and the member's accumulated prior service contributions, made by the member and standing to the credit of the member's individual account.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### **3.28.030.17 "Member's accumulated normal contributions."**

"Member's accumulated normal contributions" means the sum of all normal contributions made by a member and standing to the credit of the member's individual account, plus regular interest thereon.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.18 "Member's accumulated prior service contributions."**

"Member's accumulated prior service contributions" means the sum of all prior service contributions made by a member and standing to the credit of the member's individual account, plus regular interest thereon.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.19 "Member's prior service contributions."**

"Member's prior service contributions" means contributions made by a member on account of city service rendered prior to July 1, 1975.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.20 "Normal contributions."**

"Normal contributions" means contributions made by a member on account of current service at the normal rates of contribution fixed by the board.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.21 "Part-time service."**

"Part-time service" means any service rendered by an employee of the city on a part-time basis. It also means and includes any service which is paid for on a part-time per diem, per hour or any basis other than annual, monthly or biweekly basis. "Part-time-employee" means any person employed by the city to render part-time service for the city.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.22 "Plan year".**

"Plan year" means July 1 to June 30.

(Ord. 28885.)

**3.28.030.23 "Prior service".**

"Prior service" means all city service rendered by a member prior to July 1, 1975, for which the member is entitled to credit under the provisions of this system.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.24 "Regular interest".**

"Regular interest" means interest at the annual rate fixed by the board, compounded annually, plus such additional interest as the board may credit from year to year.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.25 "Retirement board".**

"Retirement board" or "board" means the board of administration referred to and specified in Section 3.28.100 of this chapter.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.26 "Retirement fund".**

"Retirement fund" or "fund" means the retirement fund specified in Section 3.28.300 of this chapter.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.27 "Retirement system".**

"Retirement system", "Retirement plan", "this system" or "this plan" means the 1975 federated city employees' retirement plan created by the provisions of this Chapter 3.28.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.30 "Mandatory reduction in paid working time."**

"Mandatory reduction in paid working time" shall mean any time period during which a member's paid working time is mandatorily reduced, as calculated on an annual basis, to less than two thousand eighty hours, but not less than one thousand seven hundred thirty nine hours, pursuant to an agreement with a recognized employee organization that represents the member.

(Ord. 28603.)

**3.28.040 Use of masculine or feminine gender.**

Whenever the context so requires, the masculine gender includes the feminine and the feminine includes the masculine.

(Prior code § 2904.1028.)

**3.28.050 Overtime excluded in computing compensation.**

When the compensation of a member is a factor in any computation to be made under this chapter, there shall be excluded from such computation any compensation based on overtime put in by a member. For purposes of this chapter, overtime is the aggregate service performed by an employee in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

(Prior code § 2904.1011.)

**3.28.060 Notices - Deemed effective when.**

Any notice or order given by the retirement board to any person shall be effective upon the deposit

of such notice or order in the United States mail, postage prepaid, addressed to such person at the address of such person as said address is shown on the records of the retirement board. A member may at any time file with said board a change of address.

(Prior code § 2904.1026.)

### **3.28.070 Termination of plan.**

A. Upon the termination of this plan or upon the complete discontinuance of contributions under the plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

B. Upon the termination of this plan, the board shall perform all of the following:

1. Liquidate the assets of the retirement fund.
2. Pay all of the accrued administrative expenses of the plan, including the expenses of liquidation.
3. Determine the rights of each member, former member and beneficiary to benefits accrued to the date of termination, and ensure that all such benefits have been or are paid to the respective persons.
4. Allocate any assets in the supplemental retiree benefit reserve established pursuant to Section 3.28.340 to the then existing retired members, survivors of members, and survivors of retired members using the distribution methodology most recently approved by the city council.

C. Upon the termination of this plan and the satisfaction of all liabilities described in Subsection B. above, the board shall allocate any remaining assets of the retirement fund to the members of the plan on the basis of years of service and final compensation credited to the member at the time of termination of the plan.

(Ord. 27838.)

## **Part 2 ADMINISTRATION**

### **Sections:**

- 3.28.100 Retirement board - Designated.
- 3.28.110 Retirement board - Powers and duties.
- 3.28.120 Retirement board - Accounts and recordkeeping required.
- 3.28.130 Retirement board - Prohibited financial transactions.
- 3.28.140 Retirement board - Authority to make and enforce rules and regulations.
- 3.28.150 Retirement board - Authority to secure medical service and advice.
- 3.28.155 Authority to secure other contractual services.

- 3.28.160 Actuarial investigations - Determination of rate of interest.
- 3.28.170 Financial reports.
- 3.28.180 Authority to determine employee status and benefits.
- 3.28.190 Change in employee status - Board notification required.
- 3.28.200 Authority to adopt tables, revise contribution rates.
- 3.28.210 Determination of age, service and compensation when records are inadequate.
- 3.28.230 Adjustment of contributions and payments.
- 3.28.240 Hearings authorized when.
- 3.28.250 Power to administer oaths, issue subpoenas.
- 3.28.260 Retirement board - Annual report.
- 3.28.270 Direct transfers of eligible rollover distributions.
- 3.28.275 Review of proposed amendments.
- 3.28.280 Direct trustee-to-trustee transfers.

### **3.28.100 Retirement board - Designated.**

The retirement system established by the provisions of this Chapter 3.28, and the retirement fund provided for in this chapter, shall be managed, administered and controlled by that certain board of administration entitled "board of administration for federated city employees retirement system" which has been established by and pursuant to the provisions of Sections 2.08.1000 through 2.08.1090, inclusive, of the San José Municipal Code.

(Prior code § 2904.1050.)

### **3.28.110 Retirement board - Powers and duties.**

The retirement board shall have all the powers and duties given it by the provisions of this Chapter 3.28, including but not limited to, the powers and duties specified in this Part 2. Notwithstanding anything in this part to the contrary, the retirement board shall not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(Prior code § 2904.1051; Ord. 28885.)

### **3.28.120 Retirement board - Accounts and recordkeeping required.**

A. The retirement board shall keep or cause to be kept any and all records and accounts reasonably necessary for the management, administration or control of this retirement system, including but not limited to records of all contributions made by any and all members of the system or made by the city, and records of all moneys in the retirement fund and of the investment and distribution



of such moneys.

B. In particular, the board shall keep such records and accounts as may be necessary to show:

1. The total accumulated normal contributions of members;
2. The total accumulated prior service contributions of members;
3. The accumulated contributions of the city held for the benefit of members on account of current service;
4. All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of prior service of members.
5. The names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each person therefor.

(Prior code § 2904.1060; Ord. 25993.)

### **3.28.130 Retirement board - Prohibited financial transactions.**

A board member or employee of the board shall not, directly or indirectly:

- A. Have any interest in the making of any investment, or in the gains or profits accruing therefrom;
- B. For himself, or as an agent or partner of others, borrow any funds or deposits of this system, nor use such funds or deposits in any manner except to make such current and necessary payments as are authorized by the board;
- C. Become an endorser, surety or obligor on investments by the board.

(Prior code § 2904.1065.)

### **3.28.140 Retirement board - Authority to make and enforce rules and regulations.**

Subject to the provisions of this chapter and to all applicable provisions of the Charter of the City of San José, the board may make and enforce reasonable rules and regulations for the administration, management and control of the provisions of this chapter and of the retirement system and fund provided for herein; and each member of this system, each person retired hereunder and each person or estate entitled to or receiving any benefits under the provisions of this chapter is and shall be subject to the provisions of this chapter and to said rules and regulations.

(Prior code § 2904.1052.)

### **3.28.150 Retirement board - Authority to secure medical service and advice.**

The board may enter into contractual arrangements for such medical service and advice, and may secure and pay reasonable compensation for such independent medical examiners, as the board deems necessary to discharge its duties respecting matters involving disability or death or both. Such contracts for medical services shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Prior code § 2904.1054; Ord. 25092.)

### **3.28.155 Authority to secure other contractual services.**

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.

6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.

B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Ords. 24696, 25092.)

### **3.28.160 Actuarial investigations - Determination of rate of interest.**

The board shall keep in convenient form such data as is necessary for the actuarial evaluation of this system. The board shall cause an actuarial investigation to be made from time to time and as often as it may deem such to be reasonably necessary to keep the plan actuarially sound, but not less frequently than once each five years, commencing from and after July 1, 1975. The actuarial investigation shall consist of a report as to the mortality, service and compensation experience of members and persons receiving benefits, an actuarial valuation of the assets and liabilities of this system, and such other actuarial investigations as may be relevant to and for the benefit of the system. From time to time the board shall determine the rate of interest being earned on the retirement fund.

(Prior code § 2904.1055.)

### **3.28.170 Financial reports.**

The board shall cause to be issued, as of the date of the investigation and valuation made pursuant to Section 3.28.160, a financial statement showing an actuarial valuation of the assets and liabilities of this system. A statement as to the accumulated cash and securities in the retirement fund as certified by the auditor shall also be submitted at the same time.

(Prior code § 2904.1061.)

### **3.28.180 Authority to determine employee status and benefits.**

The board, subject to the provisions of this chapter, shall determine who are employees of the city eligible for membership in this retirement system, and is the sole judge of the conditions under which persons may be admitted to and received or continue to receive benefits under this system, and shall

determine, modify or terminate benefits for service or disability or death or any other benefits provided for in this chapter.

(Prior code § 2904.1053.)

**3.28.190 Change in employee status - Board notification required.**

The director of personnel shall give to the board such notice as it may require of the change of status of any member, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death, and other pertinent information.

(Prior code § 2904.1063.)

**3.28.200 Authority to adopt tables, revise contribution rates.**

Upon the basis of any or all of such investigations, valuations and determinations, the board shall adopt such mortality, service and other tables, actuarially assumed annual rate of return, and other actuarial assumptions as it may deem reasonably necessary, and, subject to such limitations as are set forth elsewhere in this chapter, it shall fix and from time to time make such revisions or changes in the rates of contribution required of members and of the city as it may determine reasonably necessary to provide the benefits provided for by this retirement plan.

(Prior code § 2904.1056; Ord. 27436.)

**3.28.210 Determination of age, service and compensation when records are inadequate.**

A. Whenever it is impractical for the retirement board to determine from the records of the city and from other evidence before it the length of service, the compensation or the age of any member in this retirement system, it may estimate for the purposes hereof such length of service, compensation or age. Each employee shall file with the board such information respecting his age, length of service or compensation or any other information which may affect his status as the board may require.

B. If there is a disagreement between any member and the board with respect to the length of service, compensation or age of any member, or if any member refuses or fails to give the board a statement of his city service, compensation or age or other information requested by the board, the board shall hold a hearing and upon the basis of available testimony and available records determine such length of service, compensation or age.

(Prior code § 2904.1058.)

**3.28.230 Adjustment of contributions and payments.**

If more or less than the correct amount of contribution required of members or the city is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the city and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Prior code § 2904.1064.)

**3.28.240 Hearings authorized when.**

A. The board in its discretion may hold hearings for the purpose of determining any question presented to it involving any right, benefit or obligation of any person under this chapter. Any applicant for any benefits may file an application for rehearing of his application for benefits within thirty days after written notice of the determination of the retirement board has been sent by mail to the applicant or his attorney of record, upon any of the following grounds:

1. That the retirement board acted without and in excess of its powers;
2. That the order, decision or award was procured by fraud;
3. That the evidence does not justify the determination of the retirement board;
4. That the applicant has discovered new evidence material to him which he could not with reasonable diligence have discovered or procured at the hearing.

B. The determination of the retirement board on any said application for rehearing shall be made within sixty days from and after the date of filing of said application.

(Prior code § 2904.1059.)

### **3.28.250 Power to administer oaths, issue subpoenas.**

The retirement board shall have the power to administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses or the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the board. If any person so subpoenaed neglects or refuses to appear or produce any book, paper or document as required by said subpoena, or shall refuse to testify before the board or answer any questions which a majority of the board decides to be proper and pertinent, the board shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The chief of police shall, on request of the board, have such subpoenas served by a police officer or officers.

(Prior code § 2904.1066.)

### **3.28.260 Retirement board - Annual report.**

Within ninety days after the end of each fiscal year, or if later, within thirty days after the submission to the city council of an audited annual fiscal report of the retirement system's funds required by ordinance, the board shall submit to the city council and city manager an annual report for such preceding fiscal year. The report shall contain a statement of the board's work for such period, and shall show all receipts and disbursements and the balance remaining in the retirement fund after such payments. The report may contain recommendations for or against changes in the retirement system.

(Prior code § 2904.1062; Ord. 18767 § 4, 1977, 25993.)

### **3.28.270 Direct transfers of eligible rollover distributions.**

A. If, under the provisions of this chapter, a person becomes entitled to a distribution which is an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.

B. The election made pursuant to this section shall be in accordance with the terms and conditions established by the board.

C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.

D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, consisting of any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the internal revenue service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than two hundred dollars during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only: (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. For purposes of this Section 3.36.480, "spouse" has the meaning set forth in federal law.

E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, consisting of one or more of the following:

1. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
2. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
3. An annuity plan described in Section 403(a) of the Internal Revenue Code;
4. A qualified trust described in Section 401(a) of the Internal Revenue Code;
5. Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
6. Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement plan; or
7. Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

F. For purposes of this section, "distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective July 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Ords. 24814, 28885.)

### **3.28.275 Review of proposed amendments.**

A. Except as provided in subsection B., prior to the adoption of any ordinance amending the Federated City Employees Retirement System, a copy of the proposed ordinance shall be provided to the board for the board's review and recommendation.

1. The board may, but is not required to, submit a report or recommendation on the proposed amendment to the city council.

2. If the board declines or fails to submit a report or recommendation on a proposed amendment within sixty days of receipt of the proposed ordinance by the secretary to the board, the city council may proceed to adopt or not adopt the ordinance without first receiving a report or recommendation from the board.

3. Nothing in paragraph 2. shall be deemed to preclude the board from thereafter submitting a report or recommendation to the city council.

B. In any case where the city council finds that there is a need to adopt an ordinance amending the system within a time period which would not allow for a sixty-day review period, the council may act on the ordinance without first submitting it to the board, and the following procedures shall apply:

1. At the time the council passes the ordinance for publication of title or, in the case of an urgency ordinance, at the time the council adopts the ordinance, the council shall refer the ordinance to the board for study and consideration.

2. Following its study, the board may submit to the council a recommendation that the council take one or more of the following actions:

a. Repeal the ordinance.

b. Readopt the provisions of the ordinance with such amendments, additions or changes, if any, as the board may wish to recommend.

c. Make such other changes or provisions as the board may recommend.

3. Upon receipt of the board's recommendation, the council may implement or disapprove the

recommendation.

(Ords. 24921, 24979.)

### **3.28.280 Direct trustee-to-trustee transfers.**

A. If a member of this plan becomes eligible to purchase permissive service credit in this plan and elects to make such purchase through a lump sum deposit, the plan will accept a direct trustee-to-trustee transfer of funds from an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code if such transfer is:

1. For the purchase of permissive service credit as defined in Section 415(n)(3)(A) of the Internal Revenue Code; or
2. A redeposit of withdrawn contributions pursuant to Section 3.28.790.

B. If required by the provisions of the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code, the plan will account separately for funds received through a direct trustee-to-trustee transfer from an eligible deferred compensation plan.

(Ord. 26830.)

## **Part 3 RETIREMENT FUND**

Sections:

- 3.28.300 Establishment - Name - Composition.
- 3.28.310 Retirement board administration and investment authority.
- 3.28.320 Custodian of retirement fund - Payments.
- 3.28.330 Deposit of funds.
- 3.28.340 Disposition of earnings.
- 3.28.350 Investment of funds - Conditions and limitations.
- 3.28.355 Investment of funds - Delegation of authority.
- 3.28.360 Security loan agreements.
- 3.28.365 Investments - Real estate.
- 3.28.370 Redeposit of unclaimed payments.
- 3.28.375 Investment counseling - Restrictions.
- 3.28.380 Separate medical benefits account.
- 3.28.385 Contribution rates for medical and dental benefits.

### **3.28.300 Establishment - Name - Composition.**

A. In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the retirement plan heretofore established pursuant to the provisions of Chapter 3.24 of this Code, and in order to carry out the provisions of this chapter, the retirement fund heretofore continued in existence by the provisions of Chapter 3.24 and specifically by the provisions of Section 3.24.300 of the San José Municipal Code, is hereby continued in existence and is hereby made a combined common fund for the component of the retirement system established by this chapter and for the component of the retirement system established by Chapter 3.24, and for the components of any and all other retirement systems with which it has heretofore been combined. All income and other moneys which are required pursuant to the provisions of this chapter to be paid to this retirement system or into the retirement fund shall be paid into and held in said fund; and all benefits or allowances payable to any member or person under this retirement system shall be paid from said fund. Said fund is known as and shall continue to be known as the "San José Federated City Employees Retirement Fund".

B. At no time prior to the satisfaction of all liabilities with respect to members of this plan and their beneficiaries shall any part of the corpus or income of the retirement fund be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries.

(Prior code § 2904.1100; Ords. 25092, 27838.)

### **3.28.310 Retirement board administration and investment authority.**

The board has the exclusive control of the administration and investment of the retirement fund.

(Prior code § 2904.1101; Ord. 25092.)

### **3.28.320 Custodian of retirement fund - Payments.**

A. Except as provided in subsection B., the city director of finance is the custodian of the retirement fund, subject to the exclusive control of the board as to administration and investment. All payments from the fund shall be made in the manner required for the disbursement of other public funds, but only upon authorization of the board.

B. The board may enter into contractual arrangements with California banks or with national banking associations to provide master custody services with respect to the assets of the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Prior code § 2904.1102; Ord. 25092.)

### **3.28.330 Deposit of funds.**

The board shall deposit, to the credit of the retirement fund, all amounts received by it under this chapter in the city treasury or in such custodial accounts as are established with the custodian bank.

(Prior code § 2904.1104; Ord. 25092)

### **3.28.340 Disposition of earnings.**

A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the



following meanings:

1. "Income account" means the account established in the general reserve pursuant to subsection B. below.
2. "Interest crediting rate" means the interest rate determined by the Board for crediting the employee contribution reserve.

B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:

1. The employee contribution reserve.
  - a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.
  - b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.
2. The supplemental retiree benefit reserve.
  - a. The board shall credit to the supplemental retiree benefit reserve all interest payable pursuant to subsection C. below and that portion of the excess earnings determined pursuant to subsection D. below.
  - b. Distributions from the supplemental retiree benefit reserve shall be made in accordance with subsection E. below.
3. The general reserve.
  - a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.
  - b. The board shall credit to the general reserve all contributions made by the city, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.
  - c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.
4. Such other reserves as the board may determine from time to time.

C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.

1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.
2. Interest shall be credited to the supplemental retiree benefit reserve at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower. Interest credited to the supplemental retiree benefit reserve shall be calculated as though the transfer of excess earnings required by subsection D. had been made on July 1 of the calendar year, regardless of the actual date such transfer is made.

3. Interest shall be credited to the general reserve as follows:

a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus

b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.

4. Interest shall be credited to any other reserves established by the board in the same manner as interest is credited to the supplemental retiree benefit reserve.

D. Excess earnings.

1. Within ninety days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.

2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer ten percent of the excess earnings to the supplemental retiree benefit reserve, and shall transfer the remaining ninety percent of the excess earnings to the general reserve. If the balance remaining in the income account is less than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.

E. Distributions from the supplemental retiree benefit reserve.

1. The supplemental retiree benefit reserve shall be used only for the benefit of retired members, survivors of members, and survivors of retired members.

2. Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental retiree benefit reserve to said persons.

(Prior code § 2904.1103; Ords. 20596, 22263, 22486, 23087, 25092, 27436.)

**3.28.350 Investment of funds - Conditions and limitations.**

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be

permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.

B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan, and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.

E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

(Ords. 25092, 28885.)

### **3.28.355 Investment of funds - Delegation of authority.**

Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.28.350, the board may adopt an investment resolution or resolutions containing detailed guidelines, consistent with Section 3.28.350. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.28.375, provided that such officer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution or resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported monthly to the board by the person or persons to whom the board has delegated such authority.

(Ord. 25092.)

### **3.28.360 Security loan agreements.**

A. The retirement board may enter into contractual arrangements with broker-dealers and with banks for such broker-dealers or banks to provide security lending services pursuant to security loan agreements on such conditions, consistent with this section, as the board may determine.

B. For the purposes of this section, "security loan agreement" and "marketable securities" shall be defined as follows:

1. "Security loan agreement" means a written contract whereby a legal owner, the lender, agrees to lend specific marketable corporate or government securities for a period not to exceed one year. The lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled. The lender waives the right to vote the securities during the term of the loan.

2. "Marketable securities" means securities that are freely traded on recognized exchanges or market places.

C. Any contractual arrangements entered into pursuant to this section shall require all of the

following:

1. The lender may terminate the security loan agreement upon not more than five business days' notice as agreed and the borrower may terminate the security loan agreement upon not less than two business days' notice as agreed.
2. The borrower shall provide collateral to the lender in a form approved by the board, and in an amount equal to at least one hundred two percent of the market value of the loaned securities as agreed.
3. Daily monitoring of the market value of the loaned securities.
4. Payment by the borrower of additional collateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upon ratios, but in no event shall the amount of the collateral be less than the market value of the loaned securities.
5. Maintenance of detailed records of all security loans.
6. Development of controls and reports to monitor the conduct of the transactions.
7. Publication of the net results of the security loan transactions separate from the results of other investment activities.

(Ords. 24690, 25092.)

### **3.28.365 Investments - Real estate.**

A. The board may:

1. Acquire, hold for investment or sell commercial, industrial and residential real estate, and real estate related debt instruments in the following forms: in its own name or in common ownership with the police and fire department retirement plan or through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25);
2. Lease real property owned by the board for any lawful purpose and for terms which may extend beyond the duration of this retirement system;
3. Create restrictions and easements affecting the real property owned by the board; and
4. Exercise all other rights, privileges and powers which an owner of real property would have, unless otherwise prohibited by the terms of this retirement plan or by other applicable law.

B. The board shall take title as follows:

1. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement system shall be taken and held in one of the following forms: directly by the board of administration in the name of board of administration as trustee for the federated city employees retirement fund, or through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25).
2. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement plan to be held in common ownership with the police and fire department retirement plan shall be taken and held in the following name: board of administration as trustee for the federated city employees retirement fund, as to an undivided specified percent interest, and the board of administration, as trustee for the police and fire department

retirement fund, as to an undivided specified percent interest, together as tenants in common. The percent interests to be specified in the title shall be determined by the boards of administration.

C. For the purposes of this Section 3.28.365, a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25) may be such a corporation or trust established by the board.

(Ords. 25092, 25994.)

### **3.28.370 Redeposit of unclaimed payments.**

Notwithstanding any provision in this chapter or any other ordinance to the contrary, whenever any check drawn against the retirement fund in payment of accumulated contributions or for any benefit remains unclaimed or the claimant cannot be found, the amount of such check shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and such redeposit shall not operate to reinstate the membership of the claimant in this system. If such proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the accumulated contributions of the city, held in the retirement fund to meet the liabilities of the city on account of current services. The board may at any time after reversion of proceeds to the city, and upon receipt of proper information satisfactory to it, return such proceeds so held for the city to the credit of the claimant, to be administered in the manner provided under this system.

(Prior code § 2904.1106; Ord. 25092.)

### **3.28.375 Investment counseling - Restrictions.**

A. The board may enter into contractual arrangements with any person or persons or association or associations, who meet the requirements of subsection B. or C., to provide counsel to the board with respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.

B. Any person or association who provides services to the board with regard to financial securities:

1. Shall be a person or association whose principal business consists of investment counseling services; and

2. Shall be registered as an investment adviser under such laws as may require such registration.

C. With respect to real estate advisors, the board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking or property management, and which are duly licensed to perform real estate advisor services in the jurisdiction where the real property is located.

(Prior code § 2904.1107; Ords. 21606, 25092, 25641.)

### **3.28.380 Separate medical benefits account.**

A. There is hereby established as of July 1, 1995, the medical benefits account as a separate

account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account may be commingled with other monies in the retirement fund solely for the purposes of investment.

B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and all earnings and interest attributable to such contributions to the retirement fund, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the city makes a contribution to the medical benefits account, the city shall designate in writing that such contribution is solely for the medical benefits account.

C. Contributions to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and earnings and interest attributable to such contributions may be made to the medical benefits account or to the trust established by Chapter 3.52.

D. All funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 16 and 17 of this chapter. Prior to the satisfaction of all liabilities under this plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.

E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the plan, shall be subordinate to the retirement and survivors' benefits provided by the plan. Accordingly, at all times after the date on which the medical benefits account is established, the aggregate of the city's contributions to the medical benefits account shall not exceed twenty-five percent of its total aggregate contributions to the plan (other than contributions to fund prior service). For the purpose of this limitation, city contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).

F. Upon the satisfaction of all liabilities under this plan to provide the benefits described in this section, any amount remaining in the medical benefits account shall be paid to the city.

G. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the city contributions, if any, to the medical benefits account.

H. City and member contributions to the medical benefits account shall be made on the same periodic basis as city and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

(Ords. 27838, 28332, 28885, 28914.)

### **3.28.385 Contribution rates for medical and dental benefits.**

Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by the city and the members of the plan as follows:

A. Contributions for dental benefits shall be made by the city and the members in the ratio of eight-to-three.

B. Contributions for medical and dental insurance premiums costs attributable to the early retirement incentive programs described in Parts 18, 19, and 20 of this chapter shall be borne by the city.

C. Contributions for other medical benefits shall be made by the city and the members in the ratio of one-to-one.

(Ord. 28914.)

#### **Part 4 MEMBERSHIP**

##### **Sections:**

3.28.400 Continuation of members of the Chapter 3.24 retirement system holding city offices on June 30th and July 1, 1975.

3.28.410 Reinstatement from Chapter 3.24 service retirement and reentry into federated city service.

3.28.420 Reinstatement from or reentry after Chapter 3.24 disability retirement.

3.28.430 Reentry in city service, before retirement, by persons who retained membership in Chapter 3.24 retirement system pursuant to Section 3.24.510 or other provisions of Chapter 3.24 system.

3.28.440 Persons employed on June 30, 1975, as part-time, employees who are not members of the Chapter 3.24 retirement system.

3.28.450 Other persons who become city officers or employees on or after July 1, 1975.

3.28.460 Exclusions and exceptions - Mayor and members of city council.

3.28.470 Exclusions and exceptions - Members of boards and commissions.

3.28.490 Exclusions and exceptions - Persons temporarily employed pursuant to Section 1101(a)(4) of city Charter.

3.28.500 Exclusions and exceptions - Persons employed in event of emergency pursuant to Section 1101(a)(5) of city Charter.

3.28.510 Exclusions and exceptions - Persons employed pursuant to Section 1109 of city Charter.

3.28.520 Exclusions and exceptions - Volunteer workers.

3.28.530 Exclusions and exceptions - Emergency appointments in time of war or national emergency.

3.28.540 Exclusions and exceptions - Relief or antipoverty programs.

- 3.28.545 Exclusions and exceptions - Police recruits, firefighter recruits.
- 3.28.550 Exclusions and exceptions - Members of other retirement or pension systems.
- 3.28.560 Exclusions and exceptions - Part-time employees.
- 3.28.570 Termination of membership.
- 3.28.580 Election by persons who became members pursuant to Sections 3.28.400 through 3.28.430, inclusive, to allow accumulated contributions to remain in fund.
- 3.28.590 Election by members other than those specified in Section 3.28.580 to allow accumulated contributions to remain in fund.

**3.28.400 Continuation of members of the Chapter 3.24 retirement system holding city offices on June 30th and July 1, 1975.**

Each person who on June 30, 1975, was an officer or employee of the city holding an office or position entitling him or her to membership in this retirement plan pursuant to the provisions of Chapter 3.24 and who, in addition, was a member of the retirement plan on that date, shall become and be subject to the provisions of this Chapter 3.28 upon its becoming effective if he or she continues to hold that office or position to and through July 1, 1975, and, in addition, continues to be a member of the Chapter 3.24 retirement system until the effective date of this chapter. Upon becoming subject to the provisions of this chapter, each such person ceases to be a subject to the provisions of Chapter 3.24 and he or she, and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24, cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided by this Chapter 3.28 system.

(Prior code § 2904.1150; Ord. 27838.)

**3.28.410 Reinstatement from Chapter 3.24 service retirement and reentry into federated city service.**

A. A person who has been retired from service under the provisions of Chapter 3.24, at an age less than the age for compulsory retirement applicable to him or her, may be reinstated from retirement to federated city service by the retirement board in accordance with the provisions of this chapter, and, upon such reinstatement or thereafter, such person may be reemployed by the city in a position in the federated city service in accordance with the laws governing such employment in the same manner as a person who had not been so retired.

B. The retirement board shall not reinstate any such person from service retirement unless:

1. The person proposed to be reinstated has filed with the board a written application requesting such reinstatement;
2. At least one (1) year has or will have expired between the effective date of said person's last retirement and the date of reinstatement; and
3. The board has found and determined that said person's age on the effective date of his reinstatement is at least six (6) months less than age seventy (70).



C. When a person is reinstated from service retirement and reenters federated city service pursuant to this section, his or her service retirement allowance shall be canceled as of the effective date of the reinstatement, and, subject to the exceptions and exclusions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, he or she shall become and be a member of this retirement plan as of the effective date of his or her new employment in the federated city service. Upon becoming a member of this plan, any such person who formerly was retired for service under the provisions of Chapter 3.24 ceases to be governed by the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24 cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided for in this chapter.

(Prior code § 2904.1151; Ord. 27838.)

### **3.28.420 Reinstatement from or reentry after Chapter 3.24 disability retirement.**

If a person retired for disability under the provisions of Chapter 3.24 and the disability retirement allowance is canceled for either of the following reasons, then, subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, the person shall become and be a member of this plan upon being reinstated to a position in federated city service or upon reentry into federated city service. Upon becoming a member of this plan, any such person who formerly was retired for disability under the provisions of Chapter 3.24 ceases to have any rights thereunder but will thereafter be governed by and have only such rights as are provided for in this chapter. This provision applies to:

A. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provisions of Section 3.24.1290 of the San José Municipal Code and who is reinstated, in accordance with the provisions of said Section 3.24.1290 to the city position held by him or her when retired for disability or to a position in the same classification of positions with duties within his or her capacity; or

B. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provisions of Section 3.24.1300 of the San José Municipal Code because of his or her reentry into federated city service in a position other than the position held when he or she retired for disability and other than any position in the same classification of positions as the position held when he or she retired for disability.

(Prior code § 2904.1152; Ord. 27838.)

### **3.28.430 Reentry in city service, before retirement, by persons who retained membership in Chapter 3.24 retirement system pursuant to Section 3.24.510 or other provisions of Chapter 3.24 system.**

Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, each person, other than persons covered by the provisions of Sections 3.28.400, 3.28.410 and 3.28.420, who was a member of the plan as described in Chapter 3.24 and retained such membership upon leaving city service by exercising the option given him or her by Section 3.24.510 or other provisions of Chapter 3.24, shall become and be subject to the provisions of this Chapter pursuant to the provisions of this section if, on or after July 1, 1975, while he or she is still a member of the plan as described in Chapter 3.24, but before retirement thereunder for service or disability, he or she again becomes an officer or employee of the city in the federated city service. Upon the effective date the person again becomes an officer or employee in the federated city service, such person shall cease to be subject to the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of such person's coverage under Chapter 3.24,

shall cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided in this chapter.

(Prior code § 2904.1153; Ord. 27838.)

**3.28.440 Persons employed on June 30, 1975, as part-time, employees who are not members of the Chapter 3.24 retirement system.**

A. Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, each person who on June 30, 1975, was in the employ of the city as a part-time employee, excepting such of them, if any, as may become members of this retirement system under and pursuant to the provisions of Section 3.28.400, shall have and is hereby given an option of becoming subject to the provisions of this Chapter 3.28 if he or she continued to be so employed as a part-time employee of the city to and through July 1, 1975.

B. Each of said persons, in order to exercise said option, shall file with the secretary of the retirement board a written statement, on a form to be furnished by the Board upon his or her request, declaring that he or she elects to become subject to the provisions of this chapter. Said statement shall be filed on or before, and no later than, the thirty-first day of August, 1975. Upon filing said written statement with the secretary in the manner and within the time specified in this section, such person shall become subject to the provisions of this chapter as of the effective date of this chapter. Contributions which would have been required of the person because of service rendered by him or her from July 1, 1975, to the date the person exercises said option shall be charged to him or her and deducted from his or her paycheck. No such person shall become subject to the provisions of this chapter unless he or she exercises said option in the manner and within the time specified in this section.

(Prior code § 2904.1154; Ord. 27838.)

**3.28.450 Other persons who become city officers or employees on or after July 1, 1975.**

Subject to the exclusions and exceptions hereinafter set forth in this Part, each person, other than those persons specified or mentioned in Sections 3.28.400 through 3.28.440, inclusive, who becomes an officer or employee of the city on or after July 1, 1975 by virtue of an appointment made on or after said date shall become and be a member of this plan as of the effective date of his or her appointment; provided, however, that the foregoing provisions of this section do not apply to persons employed to render part-time service.

(Prior code § 2904.1155; Ord. 27838.)

**3.28.460 Exclusions and exceptions - Mayor and members of city council.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or her election or appointment to, or his or her holding the office of, mayor or member of the city council or because of any service rendered by him or her while he or she is mayor or a member of the council.

(Prior code § 2904.1156; Ord. 27838.)

**3.28.470 Exclusions and exceptions - Members of boards and commissions.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or election or appointment to, or his or her membership in, any board or commission of the city, or because of his or her election or appointment to or his or her holding of any office in said board or commission, or because of any service rendered as a member or officer of any such board or commission.

(Prior code § 2904.1157; Ord. 27838.)

**3.28.490 Exclusions and exceptions - Persons temporarily employed pursuant to Section 1101(a)(4) of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is temporarily employed pursuant to the provisions of Subparagraph (4) of Subsection (a) of Section 1101 of the Charter of the city to make or conduct any special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional nature, nor because of any service rendered pursuant to such employment.

(Prior code § 2904.1159; Ord. 27838.)

**3.28.500 Exclusions and exceptions - Persons employed in event of emergency pursuant to Section 1101(a)(5) of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is employed pursuant to Subparagraph (5) of Subsection (a) of Section 1101 of the Charter of the city in the event of an emergency to perform services required because of and during such emergency, nor because of any service rendered pursuant to such employment.

(Prior code § 2904.1160; Ord. 27838.)

**3.28.510 Exclusions and exceptions - Persons employed pursuant to Section 1109 of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is employed or his or her services are contracted for pursuant to the provisions of Section 1109 of the City Charter or pursuant to any transfer, consolidation or contract mentioned in said Section 1109, nor because of any services rendered pursuant to any such employment or contract.

(Prior code § 2904.1161; Ord. 27838.)

**3.28.520 Exclusions and exceptions - Volunteer workers.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or her appointment as or his or her being a volunteer member of any police, fire or civil defense department, force, agency or organization, nor because of any service rendered as such volunteer member.

(Prior code § 2904.1162; Ord. 27838.)

**3.28.530 Exclusions and exceptions - Emergency appointments in time of war or national emergency.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of any appointment or employment made or entered into pursuant to the provisions of Section 1110 of the Charter of the city, nor because of any service rendered pursuant to any such appointment or employment.

(Prior code § 2904.1163; Ord. 27838.)

**3.28.540 Exclusions and exceptions - Relief or antipoverty programs.**

Anything elsewhere to the contrary notwithstanding, unless otherwise provided by the city council upon recommendation of the retirement board, no person shall become or be a member of this plan because of his or her employment pursuant to any relief or antipoverty program where such employment is provided primarily to give relief or aid to such persons.

(Prior code § 2904.1164; Ord. 27838.)

**3.28.545 Exclusions and exceptions - Police recruits, firefighter recruits.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of any appointment or employment as a police recruit or firefighter recruit or because of any appointment or employment for which the principal purpose is training such person to become a police officer or firefighter.

(Ords. 22677, 22735; Ord. 27838.)

**3.28.550 Exclusions and exceptions - Members of other retirement or pension systems.**

A. Anything elsewhere to the contrary notwithstanding, persons who are members of any police, fire or other retirement or pension system (other than this plan as described in this chapter or in Chapter 3.24, the federal social security system, or any retirement or pension system of the federal government) supported in whole or in part by funds of the United States government, or of any state government, or of this city or any other city or municipal government or corporation, or of any political subdivision, department, district, authority or agency of any such government or corporation, who are receiving or are entitled to any credit in such other system for any service rendered to the city are hereby excluded and excepted from membership in this plan; provided and excepting, however, that nothing contained in this section shall be deemed to prohibit any such person from becoming or being a member of this plan after the person has ceased being a member of the abovementioned police, fire or other system if the person should thereafter qualify for membership in this plan.

B. For the purpose of this section, the following persons shall not be deemed to be members of any other retirement or pension system:

1. Persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, because of or on account of service rendered to an employer other than the City of San José while they were not in the employ or service of the city.

2. Persons whose membership in another retirement or pension system is in a reciprocal system, as defined in Part 21 of this chapter, and whose service in such other system is included as service in this plan solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances pursuant to Subsection D. of Section 3.28.2420 of Part 21.

(Prior code § 2904.1165; Ords. 24682, 27838.)

### **3.28.560 Exclusions and exceptions - Part-time employees.**

Anything elsewhere to the contrary notwithstanding, no person appointed or employed as a part-time employee shall become or be a member of this plan because of such appointment or employment, or because of any service rendered pursuant to any such appointment or employment; unless he or she became or becomes a member of this plan under and pursuant to the provisions of Section 3.28.400 through 3.28.440, inclusive, or unless, having become a member of this plan under any of the foregoing sections of this part, and while rendering such full-time city service for the city as qualifies him or her to continue as a member of this plan, he or she discontinues such full-time service and, without a break in service, continues to render or does render city part-time service of a kind and nature not excluded or excepted by the provisions of Sections 3.28.460 through 3.28.550, inclusive, of this part.

(Prior code § 2904.1166; Ord. 27838.)

### **3.28.570 Termination of membership.**

Except as otherwise provided in Sections 3.28.580 and 3.28.590, a person ceases to be a member of this plan upon the occurrence of any of the following events:

- A. Upon his or her death before retirement for service or disability;
- B. Upon his or her retirement for service or disability;
- C. Upon discontinuance of his or her federated city service because of resignation or discharge, or because of layoff or leave of absence found by the retirement board to have resulted in permanent discontinuance, and in the latter case as of the date of the determination by the board that the discontinuance is permanent.

(Prior code § 2904.1167; Ord. 27838.)

### **3.28.580 Election by persons who became members pursuant to Sections 3.28.400 through 3.28.430, inclusive, to allow accumulated contributions to remain in fund.**

A. The provisions of this section apply only to persons who became subject to the provisions of this chapter pursuant to the provisions of Sections 3.28.400 through 3.28.430, inclusive, of this part.

B. If the federated city service of a member described in Subsection A. is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed or found by the retirement board to have resulted in permanent discontinuance (and in such case, as of the date of determination by the board that the discontinuance is permanent), or if such member retires for disability under the provisions of this chapter but such retirement is followed by a cessation of the disability because of which the member was retired and his or her disability retirement allowance is canceled but he or she does not thereupon reenter federated city service, then, in either of said events, if the amount of said member's accumulated normal contributions standing to his or her credit at that time is five hundred dollars or more, the member shall have the right to elect, not later than the ninetieth day from and after the date upon which notice of such right is mailed to him or her at the latest address on file with the board:

1. To continue (or in the case of the abovementioned person whose disability retirement allowance was canceled, to renew) his or her membership by allowing all of his or her accumulated prior service contributions and all or part (but in no event less than five hundred dollars of his or her accumulated normal contributions to remain in the retirement fund); or

2. To terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions.

C. Failure to make such election within the above-specified time shall be deemed to be an irrevocable election to terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions; provided and excepting, however, that if such member is entitled under this plan to credit for twenty or more years of federated city service, the failure to make such election within said time shall be deemed to be an election to continue or renew, as the case may be, his or her membership by allowing all of his or her accumulated contributions to remain in the retirement fund.

D. An election to allow all or part of one's accumulated normal contributions to remain in the fund may be revoked at any time by said person as to all such normal contributions or as to any part of them in excess of five hundred dollars.

E. Upon electing to terminate or not renew membership by withdrawing all of his or her accumulated contributions, such person immediately:

1. Ceases to be a member of this plan (or loses the right to renew his or her membership, as the case may be); and

2. Loses all rights to any credit for federated city service to which he or she was entitled hereunder; and

3. Except as may be otherwise provided elsewhere in this plan, loses all other rights or privileges under this plan excepting the right to the return of his or her said accumulated contributions, which said contributions shall be returned to the person forthwith.

F. Upon electing to continue or renew membership by allowing all of his or her accumulated prior service contributions and all or part (but not less than five hundred dollars of his or her accumulated normal contributions to remain in the retirement fund:

1. The said person continues to be or again becomes a member; and

2. The member and his or her survivors shall thereafter have such rights, if any, as are provided elsewhere in this Chapter 3.28 for the member and his or her survivors, except that, unless otherwise provided elsewhere in this plan, he or she shall lose and shall no longer be entitled to credit for any federated city service on account of which such withdrawn contributions had been paid into the retirement fund. In determining the federated city service for which a person is no longer entitled to credit upon such partial withdrawal, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest federated city service rendered by the person to the city, or on account of the person's earliest federated city service if so requested by said person at the time he or she withdraws a part of his or her accumulated normal contributions.

G. A member may at any time, if he or she so elects, voluntarily relinquish such right as the member may have to be credited for federated city service for such periods of time as may be designated by him or her, without withdrawing any contributions paid by the member because of such service, provided he or she retains credit for not less than five years of continuous federated city service; and in such event, in determining the member's eligibility for or the amount of any benefits to which he or she may subsequently be entitled, the member shall be given no credit for any federated city service so relinquished, and any contributions left in the fund which were made because of the service for which the member has relinquished credit shall be treated as income of the retirement fund.

H. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to

have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1168; Ords. 27838, 28885.)

**3.28.590 Election by members other than those specified in Section 3.28.580 to allow accumulated contributions to remain in fund.**

A. The provisions of this section apply only to members of this plan who are entitled to credit for five or more years of federated city service rendered after June 30, 1975, and who are not covered by the provisions of Section 3.28.580.

B. If the federated city service of a member described in Subsection A. above is discontinued by reason of resignation or discharge or by reason of layoff or leave of absence which is determined by the retirement board to have resulted in permanent discontinuance (the effective date of such discontinuance to be the date of said determination by the board), then such member shall have the right to elect:

1. To continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
2. To terminate membership in this system by withdrawing all of his or her accumulated contributions.

C. If a member described in Subsection A. above retires for disability but the disability retirement allowance is canceled because of a cessation of the disability for which the member retired and such member does not thereupon reenter federated city service, then such member shall have the right to elect:

1. To renew membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
2. Not to renew membership in this system by withdrawing all of his or her accumulated contributions.

D. The election described in Subsections B. and C. shall be made not later than the ninetieth day from and after the date notice of the right to make such election is mailed to the member at the latest address on file with the board.

1. In the case of a member entitled to credit for less than twenty years of federated city service, failure to make such election within said ninety days shall be deemed to be an irrevocable election to terminate or not renew, whichever is applicable, membership in this system by the withdrawal of all of the member's accumulated contributions.

2. In the case of a member entitled to credit for twenty or more years of federated city service, failure to make such election within said ninety days shall be deemed to be an election to continue or renew, whichever is applicable, membership in this system by allowing all of the member's accumulated contributions to remain in the retirement fund.

E. Upon electing to terminate or not renew membership in this system pursuant to Subsection B., C. or D. above, the person immediately:

1. Ceases to be a member of this system or loses the right to renew membership in this system, whichever is applicable; and
2. Unless otherwise provided elsewhere in this chapter, loses all credit for any federated city service to which he or she was entitled under this system; and
3. Loses all other rights and privileges under this system except the right to the return of his or her accumulated contributions, and such contributions shall be returned to such person forthwith.

F. Upon electing to continue or renew membership in this system, whichever is applicable, by allowing all of his or her accumulated contributions to remain in the fund, the person:

1. Continues to be, or again becomes, a member of this system; and
2. Shall continue to be entitled to credit for such federated city service as he or she was entitled as of the time the person made such election; and
3. Shall thereafter have such rights, if any, as are provided in this chapter for such person or such person's survivors.

G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1169; Ords. 21371, 23485, 27838, 28885.)

## **Part 5 FEDERATED CITY SERVICE**

### **Sections:**

- 3.28.600 Definitions generally.
- 3.28.610 Federated city service defined.
- 3.28.620 Exclusions and exceptions from federated city service.
- 3.28.630 Military service defined - Deemed federated city service when - Conditions.
- 3.28.640 Service credit for absence on or after July 1, 1975, because of service-connected injury or illness.
- 3.28.650 Service under police or fire department plan where functions and duties of former police or fire department position are transferred to federated city service.
- 3.28.660 Service under police and fire department retirement plan where member elects to pay contributions to federated system for such service.



- 3.28.670 Part-time service rendered prior to July 1, 1975.
- 3.28.680 Computation of amount of service.
- 3.28.685 Absence without compensation during city hall closures.
- 3.28.690 Absence without compensation during periods of mandatory reduction in paid working time.

### **3.28.600 Definitions generally.**

Unless the context otherwise requires, the definitions set forth in this Part 5 govern the construction and interpretation of provisions of this retirement system as set forth in this Chapter 3.28.

(Prior code § 2904.1200.)

### **3.28.610 Federated city service defined.**

A. Subject to other provisions of this retirement system as set forth in this Chapter 3.28, the term "federated city service", as used in this Chapter 3.28, means service for which a member of this system is entitled to credit and for which the member shall receive credit under this system.

B. Subject to such exclusions and exceptions and to such conditions and limitations as are set forth in this chapter, "federated city service" shall be deemed to include the following service, and none other, as follows:

1. City service rendered by a member prior to July 1, 1975, and before becoming a member of this system, by a person who became a member of this system pursuant to Sections 3.28.400 through 3.28.430 where such service meets the following requirements:

a. With respect to a person who became a member of this system pursuant to Section 3.28.400 or Section 3.28.430, the service rendered prior to July 1, 1975, was service for which the person was entitled to credit under the Chapter 3.24 retirement system as of the time the person became a member of this system.

b. With respect to a person who became a member of this system pursuant to Section 3.28.410 or Section 3.28.420, the service rendered prior to July 1, 1975, was service for which the person was entitled to credit under the Chapter 3.24 retirement system as of the time the person retired under the Chapter 3.24 system.

2. If a member became entitled to credit for any such service under the Chapter 3.24 retirement system only for the purpose of qualifying for benefits and not for the purpose of determining the amount of benefits to which the member might become entitled, the credit the member shall receive under this system for such service shall be subject to the same limitation.

3. Service rendered by a member on or after July 1, 1975, as an employee of the city, for the city and for compensation, provided such service is rendered by such member both while receiving such compensation and while a member of this system.

4. Military service rendered by a member on or after July 1, 1975, while a member of this system if, and only if, the member is or becomes entitled to credit for such service under the provisions of Section 3.28.630, and then only to the extent and for the purpose specified in said section.

5. Absence of a member from federated city service on or after July 1, 1975, while a member

of this system, because of service-connected injury or illness if, and only if, said member is or becomes entitled to credit for such absence under the provisions of Section 3.28.640, and then only to the extent and for the purpose specified in said section.

6. Service rendered by a member prior to the time he or she becomes a member of this system for which the member was entitled to credit under the provisions of a police and fire department retirement plan of the city if, and only if, said member becomes entitled to credit for such service under the provisions of Section 3.28.650 or Section 3.28.660.

7. Absence of a member from federated city service on or after July 1, 1975, while a member of this system, because of paid holiday or leave of absence with full compensation provided that the member continues to make contributions to the retirement fund during such absence.

8. Additional service credit as provided in Section 3.28.2120 of Part 18, Section 3.28.2220 of Part 19, or Section 3.28.2320 of Part 20 of this chapter.

9. Absence of a member without compensation because of a city hall closure where all of the conditions of Section 3.28.685 are satisfied.

10. Eligible prior service credit purchased by a member in accordance with Sections 3.28.690 and 3.28.691.

(Prior code § 2904.1201; Ords. 22573, 23366, 24107, 24346, 24807, 25732.)

### **3.28.620 Exclusions and exceptions from federated city service.**

As used in this retirement system, the term "federated city service" shall not be deemed to mean or include any of the following service, the latter being hereby excluded and excepted from the definition of "federated city service":

- A. Service rendered as mayor or as a member of the city council;
- B. Service rendered as a member of any city board or commission unless the person rendering such service is otherwise employed by the city in an office or position which qualified him for membership in this system, and he is required by virtue of his said office or position to render such service as a member of a city board or commission;
- C. Except as permitted by Part 22, service rendered while temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or other installation, or to render professional, scientific or technical services of an occasional or exceptional character;
- D. Service rendered while employed pursuant to the provisions of subparagraph (5) of subsection (a) of Section 1101 of the Charter of the city, in the event of an emergency, to perform services required because of and during such emergency;
- E. Service rendered as a volunteer member of any police, fire or civil defense department, or of any police, fire or civil defense force organization;
- F. Service rendered while employed, and service contracted for, pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;
- G. Service rendered while employed pursuant to Section 1110 of the Charter of the city;
- H. Except as permitted by Part 22, service rendered while employed pursuant to any relief or

antipoverty program where such employment is primarily for the purpose of giving relief or aid to such employees;

I. Except as otherwise provided by Section 3.28.670, part-time service rendered by a member prior to July 1, 1975, for which he was not entitled to any credit under the Chapter 3.24 retirement system;

J. Part-time service rendered on or after July 1, 1975, other than:

1. Part-time service rendered on or after said date by a part-time employee who becomes a member pursuant to Section 3.28.400 or Section 3.28.440; and

2. Part-time service rendered on or after said date by any other member if such part-time service follows, without a break in service, the rendition of full-time service by said member; and

3. Eligible prior service purchased by a member in accordance with Part 22.

K. Except as may be otherwise provided in Sections 3.28.650 and 3.28.660 of this part or in Part 21, service rendered by a person while he is a member of the police and fire department retirement plan established by the provisions of Chapter 3.32 of the San José municipal code, or the police and fire department retirement plan established by the provisions of Chapter 3.36 of the San José municipal code, or any other retirement or pension plan or system (other than this system, the Chapter 3.24 retirement system, the system established by the provisions of Chapter 3.20 of this Code, the system established by the provisions of Chapter 3.16 of this Code, the federal social security system, or any other federal retirement system) supported in whole or in part by funds of the United States, of any state government, or the city or any other city or municipal government or corporation, or of any political subdivision, department, district, authority or agency of any of said governments, if, while a member thereof the person received or was entitled to credit for such service in such system.

L. Except as provided in Part 22, service performed while a member of the eligible deferred compensation plan established by Chapter 3.50 of this Code.

(Prior code § 2904.1202; Ords. 24682, 25732.)

### **3.28.630 Military service defined - Deemed federated city service when - Conditions.**

"Federated city service" shall be deemed to include military service rendered by a member on or after July 1, 1975, while a member of this system, and such member shall be entitled to credit for such service, if and only if he or she is entitled to credit for such service under the following provisions of this section, and then only to the extent and for the purpose or purposes hereinafter provided in this section.

A. Military service defined. As used in this section, "military service" shall be deemed to mean service rendered on or after July 1, 1975, as a member of the Armed Forces of the United States or of the Merchant Marine of the United States, either during a war including the United States as a belligerent or in any other national emergency, or in time of peace if the person performing such service is drafted for such service by the United States.

B. Military service because of which city must make member contributions.

1. If, on or after July 1, 1975, while he or she is a member of this system, and while on leave of absence without compensation to engage in military service, a member of this system renders military service other than as a member of the Merchant Marine of the United States, and if, in addition, said member returns to federated city service after discharge under conditions other than dishonorable within six months after such discharge or within six months after any period of rehabilitation afforded by

the United States government, including a period of rehabilitation for purely educational purposes, the city shall contribute to this system on behalf of such member such amounts of contribution which would have been payable by said member, together with such additional amounts as would have been payable by the city, on the basis of compensation earnable at the commencement of said member's absence plus the annual salary adjustments which he or she would have received if said member had remained in federated city service and had not left for said military service. For purposes of this subsection, said member absent on said military service shall be deemed to have received a rating for the period of such absence entitling him or her to annual salary adjustment. Also, for purposes of this subsection, a member who is granted a leave of absence or placed on a city civil service reemployment list as of the same date he or she was reinstated from military leave, if said date of reinstatement is within the abovementioned six months, shall be considered as having returned to city service within the abovementioned six months if he or she returns to city service at the end of such leave of absence or upon offer of employment from the reemployment list or if he or she retires under this system for service or disability during such leave.

2. Any military service mentioned in this subsection because of which the city is required to make all of the contributions above specified in this subsection shall be deemed to be "federated city service" for which said member shall be entitled to credit in the same manner as if he or she had not been absent from federated city service during such time.

C. Military service because of which city need not pay member contributions.

1. If, on or after July 1, 1975, while he or she is a member of this system and while on leave of absence without compensation to engage in military service, a member of this system renders any military service as such service is above defined, and if such member is not entitled to have the city pay his or her member contributions during such period of time pursuant to the immediately preceding Subsection B., then in such event, said member may contribute to the system, either during his or her absence on military service or upon his or her return to federated city service, at times and in the manner prescribed by the retirement board, amounts equal to the contributions which would have been payable by said member to the system on the basis of his or her compensation earnable at the commencement of the leave of absence if he or she had remained in city service. If said member does so contribute, "federated city service" shall be deemed to include such military service and the member shall receive credit for the absence in military service in the same manner as if he or she had not been absent but were still in federated city service. If, however, said member does not contribute as aforesaid, such military service shall be credited to said member as "federated city service" only for the purpose of determining said member's eligibility for benefits under this system and such military service shall not be credited for the purpose of determining the amount of such benefits.

2. If the member elects to contribute as aforesaid and does so contribute, the city shall also contribute because of such military service to the same extent as it would have contributed if the member had not been absent on military service.

D. Manner in which city may contribute. Any contributions required of the city by the provisions of this section may be made in one sum or in the manner in which other contributions are made. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, no contributions made by the city pursuant to the provisions of Subsection B. of this section can ever be withdrawn by or paid to a member or any of the member's survivors or beneficiaries or estate.

E. Part-time employees. The provisions of this section shall apply to part-time employees only to the extent that they were in this system prior to entry into the military service.

F. For the purposes of this section, "leave of absence without compensation to engage in military service" shall include any leave of absence to engage in military service granted on or after September 1, 1990, during which the member receives compensation from the city pursuant to an action of the city

council approving special or supplemental pay or benefits for persons on leave for military duty.

(Prior code § 2904.1203; Ords. 24036, 28885.)

**3.28.640 Service credit for absence on or after July 1, 1975, because of service-connected injury or illness.**

A. Time on or after July 1, 1975, during which a member is a member of this system and during which he is absent from federated city service by reason of injury or illness determined within one year after the end of such absence to have arisen out of and in the course of his employment with the city, shall be deemed to be "federated city service" for which such member is entitled to credit for the purpose of qualifying for benefits under this system but not for the purpose of determining the amount of such benefits, unless he contributes during such absence, or upon his return to city service at times and in the manner prescribed by the board, the same amount of contributions as he would have been required to contribute if he were not absent because of any said injury or illness. If he does contribute as aforesaid, said time shall be deemed "federated city service" for which he shall be entitled to credit the same as if he were not absent from federated city service because of such injury or illness. The provisions of this section do not apply to time during which a person is retired for disability or service. Also, the provisions of this section do not apply to part-time employees.

B. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a member who elects to make contributions to purchase full service credit for a period of leave of absence pursuant to Subsection A. above may pay the contributions:

1. In one lump sum within sixty days from and after the date the member returns to city service; or
2. For elections made on or before January 31, 2011, in monthly or biweekly instalments by pre-tax payroll deductions, paid over a period of time not to exceed eight years; or
3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or
4. In a combination of a lump sum and post-tax installments.

C. Any member electing to pay the contributions in installments or to make the lump sum payment by payroll deduction shall execute a payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the director of finance.

D. The election to purchase credit through post-tax payroll deductions, pursuant to Subsection B.3. or 4. above, may be revoked. During the time the post-tax payroll deduction election is in effect, the member may make additional payments to the retirement fund for the purchase of such service credit.

E. All contributions under Subsections B.2. and C. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

(Prior code § 2904.1204; Ord. 28885.)

**3.28.650 Service under police or fire department plan where functions and duties of former police or fire department position are transferred to federated city service.**

Subject to the following conditions, restrictions, limitations and other provisions, a member of this

system, who becomes such on or after July 1, 1975, pursuant to the provisions of Section 3.28.450 and who, immediately prior to becoming a member of this system, was a member of the police and fire department plan established or administered by or pursuant to the provisions of Chapter 3.32 or Chapter 3.36 of the San José Municipal Code shall be entitled to credit under this system for service, if any, for which he was entitled to credit under said police and fire department retirement plan at the time his membership in said police and fire department plan was last terminated, if, and only if all of the following conditions exist and are satisfied:

A. Such person must have been, immediately prior to becoming a member of this system, a member of the police and fire department plan established or administered by or pursuant to Chapter 3.32 or 3.36 of the San José Municipal Code; and

B. Such person must have held, immediately prior to becoming a member of this system, a city office or positions in the police or fire department of the city which qualified him for membership in and because of which he was a member of the abovementioned police and fire department retirement plan; and

C. The office or position held by such person in the police or fire department of the city immediately prior to his becoming a member of this system must have been abolished or discontinued, and the functions and duties thereof, or substantially the same functions and duties, transferred to the federated city service; and

D. Such person must have been transferred, at the time his office or position in the police or fire department was abolished or discontinued, to a new office or position in the federated city service, to perform substantially the same functions and duties as he performed in his former office or position; and

E. Such person's abovementioned transfer must have taken place without any break in service rendered by such person, and without such person being required by civil service regulations to take or pass any civil service examination for the office or position to which he was transferred; and

F. Such person's membership in the abovementioned police and fire department retirement plan must have ceased and terminated as of the time or immediately prior to his said transfer to an office or position entitling him to membership in this system; and

G. Such person must not have received or requested a return of any contributions paid or made by him to said police and fire department retirement plan, and must not have elected to continue making contributions to the police and fire department retirement plan pursuant to the provisions of Section 3.32.010, 3.36.1620 or 3.36.1630, or any other provision of said plan; and

H. Such person must have filed with the retirement board on or before and no later than the thirtieth day immediately following the date as of which his position in the police or fire department is abolished or discontinued and he is transferred to an office or position entitling him to membership in this system, a written statement, in duplicate, duly signed by him wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, and where he consents to and authorizes the transfer and payment into the retirement fund established by this chapter, from the retirement fund established under the police and fire department retirement plan, of all moneys contributed by him to the police and fire department retirement fund, together with interest thereon; and

I. A copy of the statement specified in the immediately preceding subsection H. shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and there shall have been transferred to the retirement fund established under this chapter,

from the retirement fund established under the last-mentioned police and fire department retirement fund, all moneys contributed by said person to the abovementioned police and fire department retirement plan, together with interest thereon, moneys being so transferred being thereafter deemed to be normal contributions, or prior service contributions where applicable, of said person to this retirement system for the service credited to him under this system.

(Prior code § 2904.1205.)

**3.28.660 Service under police and fire department retirement plan where member elects to pay contributions to federated system for such service.**

Subject to the following conditions, restrictions, limitations and other provisions, a person who becomes a member of this system on or after July 1, 1975, pursuant to the provisions of Section 3.28.450 and who, prior to becoming a member of this system but on or after February 1, 1962, was a member of the police and fire department retirement plan established pursuant to Chapter 3.32 or Chapter 3.36 of the San José municipal code, shall be entitled to credit under this system for service, if any, for which the person was entitled to credit under said police and fire department retirement plan at the time his or her membership therein was last terminated, if all of the following conditions exist and are satisfied:

A. Such person must have held, prior to becoming a member of this system, a city position in the police department or fire department of the city which qualified the person for membership in, and because of which the person was a member of the police and fire department retirement plan; and

B. Such person's membership in the police and fire department retirement plan must have ceased and terminated prior to his or her becoming a member of this system; and

C. Such person must not have elected to continue making contributions to the police and fire department retirement plan, pursuant to the provisions of Section 3.36.1630 nor have retained any rights to benefits from said plan pursuant to any other provision of said plan (other than rights as an eligible surviving spouse or surviving child or rights as a former spouse under a domestic relations order of a court of competent jurisdiction); and

D. Such person must have filed with the retirement board a written notice of election re police and fire service, wherein the person elects to receive credit under this system for service for which he or she was entitled to credit under the police and fire department retirement plan pursuant to this section, and wherein the person agrees to pay into the retirement fund established by this chapter the amounts specified in Subsection E. below. Such notice of election must be filed on or before the later of:

1. The thirtieth day immediately following the date on which there is deposited in the United States mail, addressed to the person at his or her address shown in the records of the retirement board, a written notice of the person's right to make the election provided in this section; or

2. The thirtieth day following the date as of which the person becomes a member of this system.

E. In order to receive service credit in this system for service rendered while a member of the police and fire department retirement plan, the person must pay into the retirement fund established by this chapter an amount of money sufficient to make the accumulated contributions standing to the credit of the person's individual account in this system equal to the amount they would be if:

1. The person had been a member of this system (and of the Chapter 3.24 system with respect to service rendered prior to July 1, 1975), in the position because of which he or she became a member of this system, during the time he or she was rendering the previous service in the police

department or fire department for which he or she seeks to get credit; and

2. The contributions payable to this system and to the Chapter 3.24 system under such circumstances had been deducted from the person's compensation and paid into the retirement fund pursuant to this system and the Chapter 3.24 system during all of such time.

F. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a person who elects to purchase credit for prior police and fire service may pay of the contributions required by Subsection E. above:

1. In one lump sum within sixty days from and after the date the person files the written notice of election to purchase such service credit; or

2. For elections made on or before January 31, 2011, in installments by pre-tax payroll deduction; paid over a period of time not to exceed eight years; or

3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or

4. By transfer of moneys contributed by him to the police and fire department retirement fund, together with interest thereon, from the police and fire department retirement fund; or

5. By a combination of the above.

G. Any member electing to pay the contributions by pre-tax payroll deduction shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. Such irrevocable payroll authorization form shall be filed with the director of finance within the time specified in Subsection D. above for the filing of the person's election to receive service credit.

The election to purchase credit for prior police and fire service through pre-tax payroll deductions and the authorization to make payments by pre-tax payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this system.

H. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund.

I. A copy of the notice of election specified in Subsection D. above shall be transmitted by the retirement board to the board which is charged with the duty of administering the police and fire department retirement plan of which said person was formerly a member.

J. All contributions under Subsections F.2. and G. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

K. If a person elects to purchase credit for prior police and fire service and make the contributions specified in this section, and subsequently does pay all such moneys as provided in this section, the person shall be credited under this system for the prior police and fire service.

L. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:

1. If the failure to complete the redeposit is because of death of the person while in federated city service and before retirement, the person shall be credited with the amount of service which is



determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the person's death.

2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any contributions made pursuant to the election shall be credited to the person's accumulated normal contributions account but the person shall receive no credit for any prior police and fire service.

(Prior code § 2904.1206; Ords. 26006, 28885.)

### **3.28.670 Part-time service rendered prior to July 1, 1975.**

A. For the purpose of qualifying for benefits payable under this system, other than and excepting the forty percent minimum allowance provided for in the subsection A. of Section 3.28.1480, but not for the purpose of determining the amount of any benefit to which one may become entitled after he qualifies for such benefit, a member who becomes such pursuant to the provisions of Section 3.28.440 shall be given credit for all part-time service, other than service of a kind specifically excluded by the foregoing provisions of this part, rendered by him for the city prior to July 1, 1975. For such limited purpose only, such service shall be deemed to be federated city service rendered on and after July 1, 1975. A part-time employee who becomes a member pursuant to Section 3.28.400 also shall have the right to treat such service as having been rendered on and after July 1, 1975, for the above-specified limited purpose only.

B. Notwithstanding subsection A. of this Section 3.28.670, a member who satisfies the eligibility requirements of Section 3.28.2510, may purchase credit for part-time service rendered prior to July 1, 1975, as provided in Part 22 of this chapter. If the member elects to purchase credit for such part-time service and completes the required payments of contributions and interest, the limitations of subsection A. above shall not apply and such service shall be deemed to be federated city service for all purposes under this chapter.

(Prior code § 2904.1208; Ord. 25732.)

### **3.28.680 Computation of amount of service.**

A. Except as otherwise provided with respect to absence on military service and as otherwise provided in Section 3.28.685 and 3.28.690, time during which a member is absent from federated city service without compensation shall not be allowed in computing federated city service.

B. The Retirement Board shall credit a member with one year of federated city service for one thousand seven hundred thirty-nine or more hours of federated city service rendered by the member in any calendar year. Credit for more than one year of such service shall not be allowed for service rendered in any calendar year.

C. If a member renders less than one thousand seven hundred thirty-nine hours of federated city service in a calendar year, as in the case of part-time service, the member shall be given credit for that proportion of one year which the hours of federated city service rendered by the member in such year bear to one thousand seven hundred thirty-nine hours.

D. Notwithstanding subsections B. and C. above, the retirement board shall credit a member with one year of federated service credit for each two thousand eighty or more hours of eligible prior service purchased by a member pursuant to Part 22. A member shall be given credit for any purchased eligible prior service that is less than two thousand eighty hours in the same proportion of one year which the hours of purchased eligible prior service bears to two thousand eighty hours.

(Prior code § 2904.1207; Ords. 24807, 25732, 28603.)

**3.28.685 Absence without compensation during city hall closures.**

Time during which a member was absent without compensation because of a city hall closure shall constitute "federated city service" in any case where all of the following requirements are satisfied:

A. The absence without compensation occurred during any of the following periods of time in which city hall was not open for public business because of a city council-approved closure:

1. December 24, 1992, through January 3, 1993, inclusive;
2. December 23, 1993, through January 2, 1994, inclusive;
3. December 23, 1994, through January 2, 1995, inclusive.

B. The member was on leave of absence without compensation because of the city hall closure and not for any other reason.

C. With respect to any member who rendered fewer than one thousand seven hundred thirty-nine hours of federated city service in the calendar year in which the city hall closure commenced, the city has paid into the retirement fund the contributions that would have been made to the fund by both the city and the member if the member had not been absent without compensation during the closure period or periods plus interest to the date the contributions are made calculated at the regular rate credited to contributions pursuant to Section 3.28.340.B.

D. The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the additional service credit provided to members by this section.

(Ord. 24807.)

**3.28.690 Absence without compensation during periods of mandatory reduction in paid working time.**

A. Time during which a member was absent without compensation because the member is subject to a mandatory reduction in paid working time shall constitute "federated city service" in any case where all of the following requirements are satisfied:

1. The member was on leave of absence without compensation because of the mandatory reduction in paid working time and not for any other reason.

2. With respect to any member who rendered fewer than one thousand seven hundred thirty-nine hours of federated city service in the calendar year in which the mandatory reduction in paid working time is in effect, the city and member have paid into the retirement fund the contributions that would have been made to the fund by both the city and the member if the member had not been absent without compensation during the mandatory reduction in paid working time.

B. The city and the member shall make their respective contributions to the retirement fund as if the member had not been absent without compensation during the mandatory reduction in paid working time.

(Ord. 28603.)

**Part 6**  
**MEMBER CONTRIBUTIONS**

**Sections:**

- 3.28.700 Normal rate of contribution - Described - Amount.
- 3.28.710 Normal rate of contribution - Determination.
- 3.28.720 Normal rate of contribution - Initial rate.
- 3.28.730 Prior service rate of contribution - Described - Amount.
- 3.28.740 Prior service rate of contribution - Determination.
- 3.28.750 Prior service rate of contribution - Initial rate.
- 3.28.755 Additional employee contributions.
- 3.28.760 Payroll deductions and other collections.
- 3.28.765 City pickup of member contributions.
- 3.28.770 Contributions - Individual account requirements.
- 3.28.780 Return of contributions.
- 3.28.785 Transfer of accumulated contributions.
- 3.28.790 Redeposit of withdrawn contributions.
- 3.28.800 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under the Chapter 3.24 system.
- 3.28.810 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under Chapter 3.28 system.

**3.28.700 Normal rate of contribution - Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, all members of this system must make monthly (or biweekly, if compensation is paid biweekly by the city) normal contributions to this system. The normal contribution required of a member for each month (or for each two weeks, if compensation is paid biweekly by the city) shall be a percentage of compensation earned (or of "compensation earnable" when so required by other provisions of this Chapter 3.28) by him in such period. Said percentage is hereinafter referred to as members' "normal rate of contribution." Said rate shall be the same for all members.

(Prior code § 2904.1250.)

**3.28.710 Normal rate of contribution - Determination.**

The normal rate of contribution required of members shall be such that, based on interest and mortality tables and other relevant actuarial data, the total amount of normal contributions which will be required of members under the provisions of this chapter will be sufficient to pay, when due, three-elevenths of the amount of all pensions, allowances and other benefits which are and will become payable under this system on account or because of current service rendered on or after July 1, 1975; provided and excepting, however, that if and when, from time to time, the members' normal rate of contribution is hereafter amended or changed, the new rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions theretofore actually required to be paid by members and any greater or lesser amount which, because of amendments hereafter made to this system or as a result of experience under this system, said members should have theretofore been required to pay in order to make their normal contributions equal three-elevenths of the abovementioned pensions, allowances and other benefits which are or will become payable on account or because of current service rendered on or after July 1, 1975, and before the effective date of the new rate.

(Prior code § 2904.1251.)

### **3.28.720 Normal rate of contribution - Initial rate.**

A. Until amended, revised or changed by the retirement board in accordance with other provisions of this Chapter 3.28, the members' normal rate of contribution on or after July 1, 1975, shall be four and seventy-nine hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this chapter.

B. The normal rate of contribution set forth in this section is based on interest and mortality tables and other actuarial data in possession of the city on the date of enactment of this section, and is subject to change from time to time by the retirement board pursuant to other provisions of this chapter.

(Prior code § 2904.1252.)

### **3.28.730 Prior service rate of contribution - Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, all members of this system must make monthly (or biweekly, if compensation is paid biweekly by the city) prior service contributions to this system. The prior service contribution required of a member for each month (or for each two weeks, if compensation is paid biweekly by the city) shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this chapter, by him in such period. Such percentage is hereinafter referred to as members' "prior service rate of contribution." Said rate shall be the same for all members.

(Prior code § 2904.1253.)

### **3.28.740 Prior service rate of contribution - Determination.**

The members' prior service rate of contribution shall be such that, based on interest and mortality tables and other relevant actuarial data, the total amount of prior service contributions which will be required of members will be sufficient to pay, when due, forty-two percent of the difference between:

A. The amount of all pensions, allowances and other benefits which are and will become payable under this system on account of or because of prior service of members; and

B. The amount of all pensions, allowances and benefits which would be and become payable to members on account of prior service (that is, on account of service rendered prior to July 1, 1975)

under the provisions of the Chapter 3.24 retirement system as it existed on June 30, 1975, if all members of this system were members of said Chapter 3.24 retirement system instead of being members of this system; provided, however, that if and when, from time to time, the members' prior service rate of contribution is hereafter amended or changed, the new rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of members' prior service contributions theretofore actually required to be paid by members and any greater or lesser amount which, because of amendments hereafter made to this system or as a result of experience under this system, said members should have theretofore been required to pay in order to make their prior service contributions equal forty-two percent of the difference specified above.

(Prior code § 2904.1254.)

### **3.28.750 Prior service rate of contribution - Initial rate.**

Until amended, revised or changed pursuant to the provisions of this Chapter 3.28, the members' prior service rate of contribution, on or after July 1, 1975, shall be one and fifty-four hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this Chapter 3.28.

(Prior code § 2904.1255.)

### **3.28.755 Additional employee contributions.**

Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.

(Ord. 28752.)

### **3.28.760 Payroll deductions and other collections.**

The retirement board shall furnish the director of finance the rates of contribution for members and the amounts of any other contributions payable by any member or members. The director of finance shall apply such rates of contribution to the earned compensation (or "compensation earnable" where applicable) of each member, and deduct from such compensation the contributions so determined and payable by each member. All other contributions authorized to be made or required of members shall be paid by such members to the director of finance. The director of finance shall furnish to the retirement board, upon its request therefor, a statement of such contributions so deducted or credited with respect to each member, together with such other information as the board may require. All contributions shall be placed in the retirement fund.

(Prior code § 2904.1256.)

### **3.28.765 City pickup of member contributions.**

A. For the purposes of this section, contributions "picked up" by the city means contributions to this system which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)).

B. Notwithstanding any other provision of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26

U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of this system.

C. Nothing herein shall be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city. The member shall have no right to receive such picked-up contributions directly but instead they must be paid to the retirement fund.

D. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pick up by the city of all or a portion of the contributions required to be paid by a member of this system.

(Ords. 22458, 25732, 26006, 28885.)

### **3.28.770 Contributions - Individual account requirements.**

A. Each member's normal contributions, including those made under the Chapter 3.24 system and those made under this system, shall be credited by the director of finance to an individual account kept for such member. Such account shall also show any and all withdrawals or redeposits of normal contributions, if any, made by the member pursuant to the provisions of the Chapter 3.24 retirement system or this system. The total normal contribution so credited to a member, plus interest, if any, on such contributions which has been credited to such account, less all such contributions which have been withdrawn and not redeposited, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated normal contributions of such member in this system.

B. Each member's prior service contributions, made on or after July 1, 1975 under the provisions of this system, also shall be credited by the director of finance to an individual account kept for such member. Such account shall also show all withdrawals of prior service contributions, if any, made by such member pursuant to the provisions of this system. The total prior service contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated prior service contributions of such member in this system.

C. Each member's additional contributions made on or after July 1, 2010 under the provisions of this system, also shall be credited by the director of finance to an individual account kept for such member. Such account shall also show all withdrawals of additional contributions, if any, made by such member pursuant to the provisions of this system. The total additional contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated additional contributions of such member in this system.

D. Payment of salaries and wages, less contributions required of a member, is in full discharge of all claims and demands whatsoever for the services rendered by the members during the periods covered by such payment, except the benefits afforded by the provisions of this chapter.

(Prior code § 2904.1257; Ord. 28752.)

### **3.28.780 Return of contributions.**

A. Except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420 of this chapter, if the membership herein of a member of this system is terminated for any reason other than death or retirement, the member shall be paid, within six months after the date of such termination, all of his or her accumulated normal contributions, all of his or her accumulated prior service contributions and all of his or her accumulated additional contributions. In any case, under the terms of this plan where a person is entitled to a return of employee contributions, such return of contributions shall include an amount equal to the amount of the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.

B. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, if during a member's employment with the city, the member is required to or elects to become a member of any other retirement system supported in whole or in part by public funds, or is required to or elects to discontinue such federated city service as qualifies him or her for membership in this system and thereafter renders city service other than federated city service, such member shall be considered as having resigned from federated city service and, except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420, to have terminated membership in this system, as of the date he or she becomes a member of said other system or ceases to render said federated city service as aforesaid.

C. Except as provided in Section 3.28.785, upon termination of a member's membership in this system for any reason other than death or retirement, the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.

D. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1258; Ords. 24682, 27838, 28752, 28885.)

### **3.28.785 Transfer of accumulated contributions.**

A. In the event a person's membership in this system is terminated because the person transfers, without a break in service, to a position that qualifies the person for membership in the police and fire department retirement plan and the person thereby becomes a member of such plan, the person may elect to leave his or her accumulated contributions on deposit in the retirement fund or may elect to have all of his or her accumulated contributions, with accrued interest thereon, transferred to the police and fire department retirement fund in accordance with the provisions of the police and fire department retirement plan.

B. If a person described in Subsection A. elects to leave his or her accumulated contributions on deposit in this retirement fund, the person shall have no right to a refund of contributions until such person separates from city service. If the person elects to leave accumulated contributions on deposit in this retirement fund, subsequently separates from city service, and does not meet the requirements of Section 3.28.580, Section 3.28.590, or Section 3.28.2420, then within six (6) months of such person's separation from city service, all of his or her accumulated contributions and the interest accrued thereon shall be paid to the person.

C. If the accumulated contributions and accrued interest of a person described in Subsection A.

are transferred to the police and fire department retirement fund, such person's membership in this system shall terminate and thereafter the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.

(Ord. 27838.)

### **3.28.790 Redeposit of withdrawn contributions.**

A. Except as provided in this Section 3.28.790 and in Section 3.28.2430, no person shall be entitled or permitted to repay or redeposit into the retirement fund or this system any accumulated contributions withdrawn by or returned to such person pursuant to the provisions of this chapter or of Chapter 3.24, nor to reacquire credit for any federated city service lost by such person because of the withdrawal or return of such person's accumulated contributions.

B. Upon any person becoming a member of this system pursuant to Section 3.28.430 or Section 3.28.450 or because of reemployment in a federated city service position, the retirement board shall cause written notice to be personally delivered or mailed to such member, informing such member of his or her rights under this section. If mailed, such notice shall be mailed to said member at the latest address as shown in the records of the human resources department of the city.

C. If the member wishes to have the prior service which was lost by reason of the withdrawal of accumulated contributions recredited to him or her, the person shall file a written notice of election to redeposit with the secretary to the board within thirty days from and after the date that written notice of his or her rights under this section is mailed or delivered to the member. If the person does not file the notice of election to redeposit within such time, the member shall be deemed to have elected not to have such prior service credited to him or her.

D. The member shall not be entitled to prior service credit under this section unless the member redeposits and pays into the retirement fund:

1. All accumulated contributions previously withdrawn by or returned to said member; plus
2. All additional interest which would have been earned by said member's contributions at the actual rate earned by the retirement fund under the provisions of this chapter or Chapter 3.24, whichever is applicable, as of the date he or she becomes a member of this system, if said accumulated contributions had not been withdrawn by or returned to said member; plus
3. Interest on the unpaid balance of all such moneys from the date said member becomes a member of this system to the date all such moneys are fully redeposited and paid into the retirement fund, at the regular rate of interest established by the board which is in effect at the time said member elects to redeposit the withdrawn or returned accumulated contributions.

E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, any member who elects to redeposit and pay into the retirement fund the moneys specified in Subsection D. may redeposit and pay said moneys:

1. In one lump sum within sixty days from and after the date said member files with the secretary of the retirement board his or her written notice of election to redeposit; or
2. For elections made on or before January 31, 2011, in installments, paid pre-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or



3. For elections made on or after February 1, 2011, in installments, paid post-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or

4. A combination of a lump sum and installments.

F. If the member elects to redeposit and pay the contributions in pre-tax installments or if the member elects to make the lump sum payment by pre-tax payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the redeposit by payroll deductions. The payroll authorization form shall be filed with the director of finance within thirty days from and after the date that written notice of his or her rights hereunder is delivered or mailed to said member. If the member does not file the payroll authorization form within such time, the member shall be deemed to have elected not to redeposit and pay the contributions by payroll deduction. The election to redeposit accumulated contributions in the retirement fund by pre-tax payroll deduction and the authorization to redeposit by pre-tax payroll deductions shall be irrevocable. During the time the pre-tax irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by the system.

G. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund.

H. All contributions under Subsections E.2. and G. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

I. If a member elects to redeposit and pay the moneys specified in Subsection D. and subsequently does redeposit and pay said moneys as provided in this section, the member shall be credited under this system for all the service for which he or she lost credit upon the withdrawal or return of his or her accumulated contributions.

J. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:

1. If the failure to complete the redeposit is because of death while in federated city service and before retirement, the member shall be credited with the amount of service which is determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the member's death.

2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any amounts redeposited and paid pursuant to such election shall be credited to the member's accumulated normal contributions account but the member shall receive no credit for any service lost by him or her because of the previous withdrawal or return of accumulated contributions.

(Prior code § 2904.1258b; Ords. 22262, 26006, 28885.)

### **3.28.800 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under the Chapter 3.24 system.**

If a person who has been retired for service or disability under the Chapter 3.24 retirement system is reinstated to and returns to federated city service and becomes a member of this system pursuant to the provisions of Section 3.28.410 or 3.28.420, his accumulated contributions in this system, as of the date he becomes a member of this system, shall be deemed to be an amount which is the actuarial equivalent of his annuity, under the Chapter 3.24 retirement system, at that time, as based on a disabled life in the case of a person retiring from disability retirement, but not exceeding the amount of

his accumulated contributions at the time of his retirement under the Chapter 3.24 system, and he shall be credited with such amount of accumulated contributions as of said time. However, for the purpose only of qualifying for benefits under this system, his accumulated contributions in this system shall never be deemed to be less than five hundred dollars.

(Prior code § 2904.1259.)

**3.28.810 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under Chapter 3.28 system.**

If a person who has been retired for service or disability under the provisions of this Chapter 3.28 system is reinstated to and returns to federated city service and again becomes a member of this system pursuant to other provisions of this chapter, his accumulated contributions in this system, as of the date he again becomes a member of this system, shall be deemed to be the amount, if any, by which his accumulated contributions in this system, as of the date he formerly retired under this system, exceeds the total amount of retirement allowances theretofore received by him under this system. However, for the purpose only of qualifying for benefits under this system, his accumulated contributions in this system shall never be deemed to be less than five hundred dollars.

(Prior code § 2904.1260.)

**Part 7  
CITY CONTRIBUTIONS**

**Sections:**

- 3.28.850 Regular current service rate - Described - Amount.
- 3.28.860 Regular current service rate - Determination.
- 3.28.870 Regular current service rate - Initial rate.
- 3.28.880 Current service deficiency rate - Determination.
- 3.28.890 Prior service contributions - Described - Amount.
- 3.28.900 Prior service contributions - Determination.
- 3.28.910 Prior service contributions - Initial rate.
- 3.28.920 City contributions for certain former members of police and fire department retirement plan.
- 3.28.925 Additional costs borne by city.
- 3.28.930 No credit to city upon withdrawal of member's accumulated contributions.
- 3.28.940 Time of payment of city contributions.
- 3.28.950 Administrative costs of system.

**3.28.955 Offset to city for additional employee contributions.**

**3.28.850 Regular current service rate - Described - Amount.**

Except as otherwise provided by other provisions of this Chapter 3.28, the city must make, after July 1, 1975, monthly (or biweekly if members contribute biweekly) current service contributions to this system. The current service contributions required of the city for each such period shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this Chapter 3.28, by members in such period. Said percentage shall consist of the sum of two rates, the first being the one which is hereinafter referred to as "city's regular current service rate of contribution," and the second being the one which is hereinafter referred to as "city's current service deficiency rate of contribution."

(Prior code § 2904.1300.)

**3.28.860 Regular current service rate - Determination.**

The city's regular current service rate of contribution shall be such that the amount of contributions paid by the city under such rate for each month (or two weeks, if members contribute biweekly) of current service for which the rate is imposed, as compared to the amount of normal contributions required of members for each such period of current service, shall be in the ratio of eight for the city to three for members.

(Prior code § 2904.1301.)

**3.28.870 Regular current service rate - Initial rate.**

A. Until amended, revised or changed by the retirement board in accordance with other provisions of this Chapter 3.28, the city's regular current service rate of contribution, on and after July 1, 1975, shall be twelve and seventy-seven hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this Chapter 3.28.

B. The initial rate established by this section is based on interest and mortality tables and other actuarial data in possession of the city on the date of enactment of this section and is subject to change from time to time by the retirement board pursuant to other provisions of this Chapter 3.28.

(Prior code § 2904.1303.)

**3.28.880 Current service deficiency rate - Determination.**

The city's current service deficiency rate of contribution shall be such as may hereafter be necessary to make up, over a period of thirty years, any existing deficiency in the amounts of current service contributions theretofore contributed by members and by the city for the payment of the cost of all allowances and other benefits which are or will become payable to members on account of current service rendered before the effective date of the latest deficiency rate, such deficiency being that resulting from amendments hereafter made to this system or as a result of experience under this system. Until the amount accumulated in the retirement fund from contributions of members and the city on account of current service equals the present value of all amounts thereafter payable from the retirement fund on account of current service, the city shall make monthly (or biweekly, if members contribute biweekly) contributions, to make up any deficiency, at the current service deficiency rate established by the retirement board. Such rate shall be established and from time to time changed by the retirement board, whenever necessary, to accomplish the above-specified objective.

(Prior code § 2904.1302.)

**3.28.890 Prior service contributions - Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, the city must make monthly (or biweekly, if members contribute biweekly) prior service contributions to this system. The prior service contribution for each such period shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this Chapter 3.28, in such period. Said percentage is hereinafter referred to as "city's prior service rate of contribution."

(Prior code § 2904.1304.)

**3.28.900 Prior service contributions - Determination.**

The city's prior service rate of contribution shall be such that, based on interest and mortality tables and other relevant actuarial data, the sum of the total amount of city's prior service contributions which will be required of the city under the provisions of this Chapter 3.28, plus the total amount of prior service contributions which will be required of members under the provisions of this chapter, plus the total amount of all prior service contributions made by the city pursuant to the provisions of the Chapter 3.24 retirement system, will be sufficient to pay, when due, all pensions, allowances and other benefits which are or will become payable under this system on account of prior service rendered prior to July 1, 1975.

(Prior code § 2904.1305.)

**3.28.910 Prior service contributions - Initial rate.**

A. Until amended, revised or changed by the retirement board in accordance with other provisions of this Chapter 3.28, the city's prior service rate of contribution, on and after July 1, 1975, shall be three and sixty-nine hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this chapter.

B. The initial rate established by this section is based on interest and mortality tables and other relevant actuarial data in the possession of the city on the date of enactment of this section and is subject to change from time to time by the retirement board pursuant to other provisions of this chapter.

(Prior code § 2904.1306.)

**3.28.920 City contributions for certain former members of police and fire department retirement plan.**

If a member who becomes such after July 1, 1975, becomes entitled to receive credit, pursuant to Section 3.28.650, for service formerly credited to him under a city police and fire department retirement plan specified in said Section 3.28.650, the city shall contribute to the retirement fund an amount equal to the sum of:

A. An amount which, when added to the amount of accumulated contributions of the member which are transferred from the police and fire department plan into the retirement system pursuant to said Section 3.28.650, will equal the amount of contributions which said member would have been required to pay under the Chapter 3.24 retirement system for service rendered prior to July 1, 1975, and under this system for service rendered on or after July 1, 1975, had he been a member of said systems from the date he became a member of the police and fire department retirement plan to the

date he becomes a member of this system;

B. An amount which, when added to the amount of city contributions which are transferred from the police and fire department retirement plan into this system pursuant to said Section 3.28.650, will be equal to the contributions which the city would have been required to pay under the Chapter 3.24 retirement system for service rendered prior to July 1, 1975, and under this system for service rendered on or after July 1, 1975, had he been a member of said systems, in lieu of being a member of the police and fire department plan, from the date he became a member of the police and fire department retirement plan to the date he becomes a member of this system.

(Prior code § 2904.1307.)

### **3.28.925 Additional costs borne by city.**

A. The city shall bear and pay for all additional costs incurred by this retirement system because of the benefits provided by the provisions of Section 3.28.1110.A.3. or Section 3.28.1570.C. to any city officers or employees which would not have been provided absent the adoption of said sections.

B. The city shall bear and pay for all additional costs incurred by this retirement system because of the medical insurance benefits provided to any person described in subsections B. or C. of Section 3.28.1950 which would not have been provided absent the adoption of said sections.

(Ords. 22314, 23485, 24347.)

### **3.28.930 No credit to city upon withdrawal of member's accumulated contributions.**

If the federated city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the board to have resulted in permanent discontinuance (and in the latter case, as of the date of determination by the board that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance but such member does not return to federated city service, and such member withdraws all or part of his accumulated normal contributions and interest thereon, and/or all or part of his prior service contributions and interest thereon, then in such event the city shall not receive a refund of its contributions made for such member nor receive a credit for such contributions against other contributions required to be made by the city.

(Prior code § 2904.1308; Ord. 20276.)

### **3.28.940 Time of payment of city contributions.**

A. Such monthly or biweekly contributions as are required of the city by the provisions of this Part 7 shall be paid by the city within ten (10) days from and after the end of the month or two-week period for which they are made.

B. In lieu of making the monthly or biweekly contributions specified in this Part 7 for the pay periods commencing with the third pay period in fiscal year 2008-09, the city shall have the option to make, on or before August 1, 2008, an advance lump sum payment of the city's contributions to the medical benefits account and the retirement fund. The amount of such advance lump sum payment for fiscal year 2008-09 shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payments that would otherwise have been the city's required contributions to the medical benefits account and the retirement fund for the pay periods commencing with the third pay period in fiscal year 2008-09.

C. Commencing with fiscal year 2009-10, the city shall have an annual option to select the periodic basis on which city contributions to the medical benefits account and to the retirement fund for that fiscal year will be paid; provided that such payment schedule shall be no less frequent than quarterly. Except as may otherwise be agreed to by the board, the notice of intent to exercise the option, including the periodic basis selected and the payment date(s) (the "notice of intent"), shall be provided by the city manager to the board on or before April 30th of the fiscal year prior to the fiscal year in which city may wish to exercise the option. The amount of the periodic payment(s) contained in city's notice of intent shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payment that would otherwise have been required.

D. In the event that written notice of intent to exercise the option to select an alternative periodic payment schedule, has not been given by the city manager to the board on or before April 30th, or such other date as may be approved by the board, of each fiscal year, or if subsequent to the giving of such notice and prior to the commencement of the fiscal year, city elects not to exercise the option to select an alternative periodic payment schedule, city's payment of the city's contributions to the medical benefits account and to the retirement fund shall be made monthly or biweekly as otherwise specified in this Part 7.

E. Such alternative periodic payments as are made by the city pursuant to the provisions of this Part 7 shall be paid by the city within ten (10) days of the payment date(s) specified in city's notice of intent.

F. No later than the end of the second pay period in the fiscal year immediately following a fiscal year in which city has made a lump sum payment as specified in paragraph B. and C., city shall provide to the board a statement showing the actual amount of the city's payroll for members of the system for the prior fiscal year. The board shall then determine whether the lump sum advance payment(s) and the payment(s) that would otherwise have been required in the absence of the lump sum advance payment(s) are actuarially equivalent. The city shall pay any underpayment by the earlier of ten (10) days following receipt of the board's notice of determination or city's next contribution due date. The city shall receive credit for any overpayment in the form of an offset against the next payment(s) due by the city.

G. In the event that a city elected lump sum payment is made later than the payment date specified in the city's notice of intent, city's contribution to the medical benefits account and to the retirement fund will be recalculated by the board's actuary, at the city's expense, to reflect the timing difference. The city will pay the difference within ten (10) days of the date that the board's notice of the amount due is received.

H. Any late payment to be made later than ten (10) days after the payment date specified in the city's notice of intent is subject to approval by the board.

(Prior code § 2904.1310; Ord. 28332.)

### **3.28.950 Administrative costs of system.**

All administrative costs of this system, as determined and approved by the board, including staff salaries and indirect labor costs, shall be borne by and paid from the retirement fund. The payment of costs of staff salaries and indirect labor from the retirement fund shall be subject to such limitations on said costs as may be agreed upon by the city and the employee organizations representing members of this system and set forth in the appropriate memoranda of agreement. Costs for staff salaries and indirect labor in excess of said limitations, if any, shall be paid by the city.

(Prior code § 2904.1309; Ords. 20066, 20848, 21165, 21242, 22263, 23433.)

**3.28.955 Offset to city for additional employee contributions.**

Notwithstanding any other provision of this Part 7, the city shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the federated city employees retirement system, of the additional employee retirement contributions that are made under Section 3.28.755 against the retirement contributions that the city would otherwise be required to make under this Part 7.

(Ord. 28752.)

**Part 8  
BENEFITS GENERALLY**

**Sections:**

- 3.28.990 Compensation limitation.
- 3.28.995 Benefit limitations.
- 3.28.1000 Benefits for portions of years.
- 3.28.1010 Annual allowances payable in installments.
- 3.28.1015 Minimum distribution requirements.
- 3.28.1020 Determining years of service in which member is entitled to credit in determining amount of benefits payable.
- 3.28.1025 Forfeitures.
- 3.28.1030 Assignment of rights and benefits.
- 3.28.1040 Integration of worker's compensation benefits.
- 3.28.1050 Release or relinquishment of rights and benefits -Assignments to city.
- 3.28.1060 Options for certain former employees of city health department and city communications department.
- 3.28.1070 Payment to member's estate of balance of accumulated contributions where benefits paid and payable under other provisions are less than such contributions.
- 3.28.1080 Vesting.
- 3.28.1090 Compliance with USERRA and the HEART Act.

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**3.28.990 Compensation limitation.**

A. Notwithstanding any other law, except as provided in Subsection A.3 and B. below, for any person who becomes a member of this plan on or after January 1, 1996, the annual compensation taken into account under this plan shall be subject to the limitation set forth in Section 401(a)(17) of the

Internal Revenue Code of 1986, as amended.

1. Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee contributions to or benefits due from the retirement plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.

2. Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member which exceeds two hundred thousand dollars (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or employee contributions due for any plan year. "Annual compensation" means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

3. As used in this Subsection A.3., the term "eligible member" means a person who first became a member of the retirement plan prior to January 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that Section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code and this section.

B. In the event Section 401(a)(17) of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to relieve all or any members of this plan described in Subsection A. from the limitation set forth in Section 401(a)(17) of the Internal Revenue Code, then for those members no longer subject to the limitation, the annual compensation taken into account under the plan shall be calculated without such limitation.

(Ords. 25001, 28885.)

**3.28.995 Benefit limitations.**

A. Notwithstanding any other law, except as provided in Subsections B. and E. below, the benefits payable to any person who becomes a member of this system on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (b)(2)(G)) without regard to paragraph (b)(2)(F) of said Section 415.

B. Effective January 1, 1990, this paragraph shall apply only to persons who became a member of this system prior to January 1, 1990. For purposes of this paragraph, these members are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the member under this system determined without regard to any amendment of the plan made after October 14, 1987.

C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial



equivalences shall be based on the applicable interest rate and annuity tables as provided in Subsection E. below.

D. The limitation year or period shall be the calendar year.

E. Basic 415(b) limitation.

1. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement plan. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

2. For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with treasury regulations.

F. Adjustments to Basic 415(b) limitation for form of benefit.

1. If the benefit under the plan is other than the form specified in Subsection E.2., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed by treasury regulations.

2. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

a. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

i. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

ii. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

b. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (such as a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the

greatest of:

i. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;

i. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

ii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the thirty-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2008, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

G. Benefits for which no adjustment of 415(b) limit is required. For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:

1. Any ancillary benefit which is not directly related to retirement income benefits;
2. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
3. Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and treasury regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

H. Other adjustments in 415(b) limitation.

1. In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with treasury regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two, using assumptions described under the treasury regulations.

2. In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in Subsection H. 1. above shall not apply.

3. The reductions provided for in Subsection H. 1. above shall not be applicable to income

received from a governmental plan (i) as a result of the recipient becoming disabled by reason of personal injuries or sickness or (ii) by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

I. Less than ten years of participation adjustment for 415(b) limitations. The maximum retirement benefits payable to any member who has completed less than ten years of participation shall be the amount determined under Subsection E, multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

J. Ten thousand dollar limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

K. Effect of COLA without a lump sum component on 415(b) testing.

1. Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "limit") to a member with no lump sum benefit, the following shall apply:

a. A member's applicable limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under the provisions of Chapter 3.44;

b. To the extent that the member's annual benefit equals or exceeds the limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and

c. Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Chapter 3.44, shall be tested under the then applicable benefit limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

2. Effect of COLA with a lump sum component on 415(b) testing. On and after January 1, 2008, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable treasury regulations.

L. Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent of the member's compensation.

1. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

2. For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made

available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

3. Compensation shall be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and shall be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

a. However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

b. For limitation years beginning on and after January 1, 2008, compensation for the limitation year shall also include compensation paid by the later of two and one-half months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

i. The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

i. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

ii. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in Subparagraph b. above are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code), shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve-month period immediately preceding the qualified military service (or, if shorter, the period of

employment immediately preceding the qualified military service).

c. Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

4. If the annual additions for any member for a plan year exceed the limitation under Section 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the employee plans compliance resolution system (or similar IRS correction program).

5. For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of this Subsection L. shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

M. Service purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the retirement plan, then the requirements of Section 415(n) of the Internal Revenue Code shall be treated as met only if:

1. The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

2. The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

3. For purposes of applying this section, the retirement plan shall not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and shall not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this Section.

4. For purposes of this section the term "permissive service credit" means service credit:

a. Recognized by the retirement plan for purposes of calculating a member's benefit under the retirement plan;

b. Which such member has not received under the retirement plan; and

c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding Subparagraph b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the retirement plan.

5. The retirement plan shall fail to meet the requirements of this section if:

a. More than five years of nonqualified service credit are taken into account for purposes of this Subsection M.; or

b. Any nonqualified service credit is taken into account under this Subsection M. before the member has at least five years of participation under the retirement plan.

6. For purposes of Paragraph 5., effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

a. Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code);

b. Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Subparagraph a. of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade twelve), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

c. Service as an employee of an association of employees who are described in Subparagraph a.; or

d. Military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the retirement plan.

In the case of service described in Subparagraph a., b., or c., such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

7. In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

a. The limitations of Paragraph 5. shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

b. The distribution rules applicable under federal law to the retirement plan shall apply to such amounts and any benefits attributable to such amounts.

8. For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the retirement plan as in effect on August 5, 1997. For purposes of this paragraph, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.

N. Modification of contributions for 415(c) and 415(n) purposes. Notwithstanding any other provision of law to the contrary, the retirement plan may modify a request by a member to make a contribution to the retirement plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

1. If the law requires a lump sum payment for the purchase of service credit, the retirement plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

2. If payment pursuant to Paragraph 1. shall not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the retirement plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the

member's contribution.

O. Repayments of cashouts. Any repayment of contributions (including interest thereon) to the retirement plan with respect to an amount previously refunded upon a forfeiture of service credit under the retirement plan or another governmental plan maintained by the city shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable treasury regulations.

P. Participation in other qualified plans; aggregation of limits.

1. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the city shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

2. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the city shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

Q. Reduction of benefits priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(Ords. 23283, 27838, 28885.)

### **3.28.1000 Benefits for portions of years.**

Whenever any person becomes entitled under the provisions of this system to any annual allowance, the annual allowance shall be deemed payable for each calendar year in which he is entitled to such allowance throughout the entire calendar year; provided and excepting, however, that if he is entitled to such allowance for only a portion of a calendar year, he shall be deemed entitled only to such portion of the annual allowance for such calendar year as the number of days during which he was entitled to such allowance in such year bears to the total number of days in such year.

(Prior code § 2904.1350.)

### **3.28.1010 Annual allowances payable in installments.**

Each annual allowance or portion thereof to which any person may become entitled under the provisions of this system during a calendar year shall be payable in equal monthly installments (or in equal biweekly installments if the city should ever elect to pay in biweekly installments); provided and excepting, however, that if the person entitled to any such allowance for any such installment period is entitled to it only for a portion of such installment period, he shall be entitled only to that portion of the allowance for such installment period as the number of days for which he is entitled to an allowance in such period bears to the number of days in such period.

(Prior code § 2904.1351.)

### **3.28.1015 Minimum distribution requirements.**

A. Notwithstanding any other provision of this chapter, the distribution of a retirement benefit shall be subject to a good faith interpretation of the minimum distribution rules of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In compliance with these provisions, payment of a member's retirement allowance shall commence no later than the later of the following:

1. The April 1 following the end of the calendar year in which the member attains age seventy and one-half; or
2. The April 1 following the end of the calendar year in which the member retires.

If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit in the form provided under the applicable provision of Section 3.28.1110.

B. The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member, or of the member and a designated beneficiary.

C. For purposes of this section, the retirement plan pursuant to a qualified domestic relations order, may establish separate benefits for a member and nonmember.

D. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

E. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be distributed within five years of his death, unless it is to be distributed in accordance with the following rules:

1. If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age seventy and one-half, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan member; or

2. If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.

F. The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

G. The death and disability benefits provided by the retirement system are limited by the



incidental benefit requirement set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. These incidental death and disability benefits include any lump sum death benefits and any disability benefits. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the retirement plan.

H. Notwithstanding the other provisions of this rule or the provisions of the treasury regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

I. Notwithstanding any other provision of this chapter, if a member has elected an optional settlement under Part 13 of this chapter and the designated beneficiary is not the spouse of the member, the periodic amounts payable to the member and the designated beneficiary shall be adjusted only to the extent necessary to ensure that the minimum distribution requirements of Internal Revenue Code Section 401(a)(9) are satisfied.

(Ords. 27838, 28885.)

### **3.28.1020 Determining years of service in which member is entitled to credit in determining amount of benefits payable.**

Whenever, in determining the amount of an allowance or other benefit payable under this system, consideration must be given to the years of federated city service to which a member is entitled to credit under this system, no consideration shall be given to number of years to which he is entitled to credit under this system for the purpose of qualification for benefits only and not for the purpose of determining the amount of benefits to which a person may become entitled hereunder.

(Prior code § 2904.1352.)

### **3.28.1025 Forfeitures.**

A. In the event of a forfeiture of benefits arising from separation from employment, death, or any other reason, the amount of such forfeiture shall remain in the retirement fund and shall not be applied to increase the benefits any member, former member or beneficiary of the plan would otherwise be entitled to receive prior to the termination of the plan.

B. The amounts forfeited shall be used to reduce the city's contributions to the plan; provided, however, that the effect of forfeitures may be anticipated in the determination of the liabilities of the plan.

(Ord. 27838.)

### **3.28.1030 Assignment of rights and benefits.**

A. All rights or benefits which any person may have or may become entitled to in or under this system, or in or to any moneys in the system, are not assignable except as specifically provided in this chapter or as specified in Subsection B.

B. Voluntary deductions which are permitted by rules and regulations approved by the board of administration of the federated city employees retirement system may be made from pension benefits payments where authorized in writing by the benefit payee.

(Prior code § 2904.1353; Ord. 29035.)

### **3.28.1040 Integration of worker's compensation benefits.**

A. No allowances or benefits payable under this system shall be modified because of any worker's compensation benefits which may become payable under the laws of the State of California to any member or to any recipient of any allowance or benefit payable under this system except as provided in subsection B. of this section.

B. In the event a member is retired for a service-connected disability pursuant to Part 10 of this chapter and receives both a service-connected disability retirement allowance and a workers' compensation benefit for temporary disability, permanent disability or vocational rehabilitation temporary disability pursuant to Division 1 or Division 4 of the California Labor Code, then the service-connected disability retirement allowance shall be offset by the sum of all such workers' compensation benefits as follows:

1. The offset shall apply only to the following persons:

a. Those persons whose application for a service-connected disability retirement was filed, by any person authorized in Section 3.28.1230 to file such application, on or after July 13, 1986; and

b. Those persons retired on the retirement board's own motion, pursuant to Section 3.28.1220, on or after July 13, 1986.

2. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the workers' compensation benefit monthly equivalent.

3. The offset shall be in effect only during such time as concurrent retirement allowances and workers' compensation benefits are paid. In the case of the payment of a lump sum workers' compensation benefit (excluding payments for medical treatment), the offset shall apply only for such period of time as concurrent payments would have been made had the workers' compensation benefit been paid in installments.

4. In no case shall the offset reduce the service-connected disability retirement allowance to an amount less than the sum of the maximum retired member contributions for medical, dental, life, and accidental death insurance premiums, as determined by the city, plus one dollar. This limitation shall apply regardless of whether the retired member actually contributes toward the payment of such premiums.

5. No offset shall be made for permanent disability benefits paid to any retired member of this system who has received a workers' compensation permanent disability rating of one hundred percent.

6. The offset shall not apply with respect to workers' compensation benefits paid for any injury or illness which did not cause or contribute to the disability for which the service-connected disability retirement was granted.

(Prior code § 2904.1354; Ord. 22245.)

### **3.28.1050 Release or relinquishment of rights and benefits - Assignments to city.**

A. Anything elsewhere in this Chapter 3.28 or in any other part of the San José Municipal Code to the contrary notwithstanding, any right, title or interest which any member of this retirement system, or any other person or persons, may have or may claim to have in or to any retirement or other allowance or in or to any benefit or benefits whatsoever, or in or to any moneys whatsoever, or any other right, title or interest which any person or persons may have or claim to have, under or by virtue of the

provisions of this retirement system, whether such right, title or interest is vested, contingent or otherwise, may be released, relinquished and given up by such member or by such other person or persons, or may be assigned to the City of San José or to the retirement system or retirement board by such member or other person or persons; and upon such being done, the right, title or interest which is so released, relinquished, given up or assigned is and shall be deemed extinguished, the same as if such right, title or interest had never existed, and neither the city nor this retirement system or retirement board shall thereafter have any liability whatsoever with respect to the right, title or interest so released, extinguished or given up or assigned.

B. However, if and to the extent that the city pays or gives any consideration, other than funds of this retirement system, for any abovementioned release, relinquishment, giving up or assignment, the amount or value of the consideration paid or given by the city for said release, relinquishment, giving up or assignment, or the actuarial value of the right, title or interest which is so released, relinquished, given up or assigned as of the date of such release, relinquishment, giving up or assignment, whichever is the lesser amount, shall be credited against and deducted from the amount of current service contributions which the city is required to pay into the retirement fund during the following calendar months until full credit therefor is thus received by the city.

(Prior code § 2904.1355.)

**3.28.1060 Options for certain former employees of city health department and city communications department.**

The provisions of this section apply only to former employees of the city health department and former employees of the city communications department who heretofore exercised the options given to them by the provisions of Part 21 or 22 of the Chapter 3.24 retirement system and who thereby became entitled to such rights as are given to them under said Part 21 or 22. Each of said persons who should become a member of this system shall have the right to elect, before or at the time he first applies for any benefits under this system, to become entitled to and to receive in lieu of any and all benefits which he or his survivors or any other person or estate may become entitled to under other sections of this Chapter 3.28, such benefits as he would be entitled to under the Chapter 3.24 retirement system, as it read on June 30, 1975, if he were still a member of the Chapter 3.24 system and service rendered and contributions paid by him while a member of this system were deemed to be service rendered and contributions paid by him under the Chapter 3.24 retirement system.

(Prior code § 2904.1356.)

**3.28.1070 Payment to member's estate of balance of accumulated contributions where benefits paid and payable under other provisions are less than such contributions.**

If in the event of the death before retirement of a member the sum of any and all moneys thereupon and thereafter paid or payable under other provisions of this system to any and all of his survivors and/or estate should be less than the amount of accumulated contributions and interest standing to his credit; or if in the event of his death after retirement the sum of any and all moneys theretofore paid or payable under other provisions of this system to such member because of his retirement plus the sum of any and all moneys thereupon and thereafter paid or payable under other provisions of this system to any and all of his survivors and/or estate should be less than the amount of accumulated contributions and interest standing to such member's credit, then in either of said events the difference between the total of said sums paid or payable under other provisions of this system and the amount of said accumulated contributions and interest shall be paid to said member's estate.

(Prior code § 2904.1357.)

### **3.28.1080 Vesting.**

A. A member shall be one hundred percent vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit under the applicable provisions of the retirement system.

B. A plan member shall be one hundred percent vested in his or her accumulated contributions at all times.

C. An affected plan member shall be one hundred percent vested in his or her accrued benefit, to the extent then funded, in the event the retirement system is terminated in whole or in part or contributions are completely discontinued.

D. For purposes of this Section 3.28.1080 "vested" shall mean the nonforfeitable right to the benefit that the member has accrued.

E. Nothing contained in this Section 3.28.1080 shall be construed or interpreted to limit modification of benefits, to the extent that such modification is otherwise allowed under federal and state law.

(Ord. 28885.)

### **3.28.1090 Compliance with USERRA and the HEART Act.**

A. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

B. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in 38 U.S.C. 43, to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement plan, are entitled to any additional benefits that the retirement plan would provide if the member had resumed employment and then died (as a non-service connected death) that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes, but such period of service shall not be counted for benefit accrual purposes.

C. Beginning January 1, 2009, to the extent required Section 414(u)(12) of the Internal Revenue Code, an individual receiving a differential wage payment (as defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(Ord. 28885.)

## **Part 9**

## **RETIREMENT FOR SERVICE**

Sections:

3.28.1100 Eligibility.

3.28.1110 Voluntary retirement for service.

3.28.1120 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.400.

3.28.1130 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.410, 3.28.420 or 3.28.430.

3.28.1140 Service retirement of former member of Chapter 3.24, Part 4 system, at age fifty or more, with fifteen or more years of service.

3.28.1150 Election by former member of Chapter 3.24 system to receive service retirement allowance provided by Chapter 3.24 system in lieu of all benefits provided by other sections of this system.

3.28.1160 Retired member not to be reemployed in federated city service unless first reinstated or employed pursuant to Section 3.28.1190.

3.28.1170 Reinstatement from retirement.

3.28.1180 Reemployment of retired member to perform city services other than federated city services.

3.28.1190 Limited reemployment of retired person.

**3.28.1100 Eligibility.**

No person shall be retired for service under or pursuant to the provisions of this Chapter 3.28 unless he is eligible therefor under and pursuant to the provisions of this chapter.

(Prior code § 2904.1400.)

**3.28.1110 Voluntary retirement for service.**

A. Subject to other provisions of this Chapter 3.28, a member of this system shall be retired for service pursuant to this section, upon his or her written application therefor to the board of administration for the federated city employees retirement system, if:

1. Such member has attained fifty-five or more years of age and is entitled under this system to credit for five or more years of federated city service rendered after he or she became and while he or she was a member of this system; or

2. If such member has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service of which not less than five years were rendered after he or she became and while he or she was a member of this system; or

3. If such member has attained fifty-five or more years of age and has rendered not less than two years of federated city service under this system and became a member of this system before April 15, 1991, pursuant to a transfer of a communications function from Santa Clara County to the City of San José and without a break in service from county communications to a city communications

classification and does not qualify under any other provisions of this chapter or Chapters 3.20 and 3.24.

B. Subject to other provisions of this chapter, a member who is retired for service pursuant to the provisions of this section shall be entitled to receive, and shall be paid, from the retirement fund from and after the effective date of such member's retirement and during the remainder of his or her lifetime, an annual service retirement allowance equal to two and one-half percent of such member's final compensation times the number of years of federated city service for which such member is entitled to credit under the provisions of this system; provided and excepting, however, that said annual allowance shall never exceed a maximum of seventy-five percent of such member's final compensation.

(Prior code § 2904.1401; Ords. 21265, 21371, 22314, 23485.)

**3.28.1120 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.400.**

A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board, if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and either:

1. He has attained fifty-five or more years of age and has accumulated contributions in the retirement fund amounting to five hundred dollars or more; or
2. He has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service and his accumulated contributions in the retirement fund amount to five hundred dollars or more.

B. Subject to other provisions of this chapter, a member who is retired for service pursuant to this section shall be entitled to receive, and shall be paid from the retirement fund, from and after the effective date of his retirement and during the remainder of his lifetime, an annual service retirement allowance equal to two and one-half percent of his final compensation times the number of years of federated city service for which he is entitled to credit under the provisions of this system; provided and excepting, however, that said annual allowance shall never exceed a maximum of seventy-five percent of his final compensation.

(Prior code § 2904.1402; Ord. 21265.)

**3.28.1130 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.410, 3.28.420 or 3.28.430.**

A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110 or 3.28.1120 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.410, 3.28.420 or 3.28.430 and he either:

1. Has attained fifty-five or more years of age and his accumulated contributions in the retirement fund amount to five hundred dollars (\$500.00) or more; or
2. He has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service and his accumulated contributions in the retirement

fund amount to five hundred dollars or more.

B. Subject to other provisions of this chapter, a member who is retired for service pursuant to this section shall be entitled to, and shall be paid, from the retirement fund, from and after the effective date of his retirement and during the remainder of his lifetime, an annual service retirement allowance which shall be equal to the sum of the following two annual allowances, as follows:

1. An annual allowance equal to two and one-half percent of his final compensation times the number of Years of federated city service rendered by him after he became and while he was a member of this system for which he is entitled to credit under this system; plus

2. An annual allowance equal to the unmodified annual service retirement allowance which he would be entitled to under the provisions of the Chapter 3.24 retirement system, if he had remained a member thereof and retired thereunder at the same age as that at which he is retiring pursuant to this section, with credit for the number of years of federated city service, other than those years of service which he rendered after he became a member of this system, for which he is entitled to credit under this system, and with his accumulated contributions equal to those credited to him in this retirement system because of federated city service rendered by him while he was a member of the Chapter 3.24 retirement system.

(Prior code § 2904.1403; Ord. 21265.)

**3.28.1140 Service retirement of former member of Chapter 3.24, Part 4 system, at age fifty or more, with fifteen or more years of service.**

A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110, 3.28.1120 or 3.28.1130 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board, if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to Section 3.28.400, 3.28.410, 3.28.420 or 3.28.430, has attained fifty or more years of age, is entitled to credit under this system for fifteen or more years of federated city service, and, after having attained the age of fifty years, has been separated from federated city services because of a curtailment of or change in the manner of performing such service and not because of resignation, discharge or retirement and the retirement board has determined that his separation is of extended and uncertain duration and not the separation normally experienced by members in positions known at the time of employment to be of limited duration or on a seasonal or interim basis.

B. Subject to other provisions of this Chapter 3.28, a member who retires for service pursuant to the provisions of this section shall be entitled to and shall be paid, from the retirement fund, from and after the effective date of his retirement and during the remainder of his lifetime, an annual service retirement allowance determined at the written election of such member made upon the filing of an application for service retirement allowance. Such annual service retirement allowance shall, at such member's election, be either:

1. An annual allowance equal to two and one-half percent of his final compensation times the number of years of federated city service for which he is entitled to credit under the provisions of this system; or

2. An annual allowance which shall be equal to the sum of the following two annual allowances, to wit:

a. An annual allowance equal to two and one-half percent of his final compensation times the number of years of federated city service rendered by him after he became and while he was a

member of this system; plus

b. An annual allowance equal to the unmodified annual service retirement allowance which he would be entitled to under the provisions of the Part 4 retirement system if he were still a member thereof and retired thereunder at the same age as that at which he is retiring pursuant to this section with credit for the number of years of federated city service, other than those years of service which he rendered after becoming a member of this system, for which he is entitled to credit under this system, and with accumulated contributions equal to those credited to him in this retirement system because of federated city service rendered by him while he was a member of the Chapter 3.24 retirement system.

(Prior code § 2904.1404; Ords. 19464, 21265.)

**3.28.1150 Election by former member of Chapter 3.24 system to receive service retirement allowance provided by Chapter 3.24 system in lieu of all benefits provided by other sections of this system.**

A. A member of this system who is eligible to retire for service under the preceding sections of this Part 9 may elect, if he was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400, 3.28.410, 3.28.420 or 3.28.430 to receive until he dies, in lieu of any and all benefits to which he or his survivors or estate might otherwise be or become entitled to under other sections of this chapter because of such service retirement, or because of his death after retirement while on such service retirement, such service retirement allowance as he would be entitled to if he were still a member of the Chapter 3.24 system, as it existed on July 30, 1975, and retired thereunder for service, at the same age as that at which he is retiring pursuant to this section, with credit for the number of years of federated city service for which he is entitled to credit under this system and with accumulated contributions equal to those credited to him in this system. A person making such election shall also be entitled to any right which he would have had, if he had retired under the Chapter 3.24 system, under the optional settlements provisions of the Chapter 3.24 system, and, if he exercises any rights under such optional settlement provisions, his named beneficiary shall receive, on his death occurring while on such retirement, such benefits, if any, as such beneficiary should become entitled to under such optional settlement provisions because of his exercise of such rights.

B. Upon exercising said election, said person loses all right to any and all other benefits which he might have or be or become entitled to under other sections of this Chapter 3.28 because of his retirement, and none of his survivors nor his estate shall have any right to any benefits under other sections of this chapter because of his death occurring while on such retirement, provided and excepting, however, that the special death benefit provided by Section 3.28.1620 shall still be payable on his death to his estate or named beneficiary.

(Prior code § 2904.1406; 3.28.1160; Ord. 21265.)

**3.28.1160 Retired member not to be reemployed in federated service unless first reinstated or employed pursuant to Section 3.28.1190.**

A person retired for service pursuant to any of the provisions of this Part 9 shall not be retained by the city to render any federated city service unless the person is first reinstated from service retirement pursuant to the provisions of this part, except:

- A. Where the person renders service as an independent contractor; or
- B. Where the person is reemployed pursuant to Section 3.28.1190.



(Prior code § 2904.1407; 3.28.1170; Ords. 21265, 26355.)

**3.28.1170 Reinstatement from retirement.**

A. A person who has been retired for service pursuant to the provisions of this Part 9 may apply to the retirement board, in writing for reinstatement from such retirement for the purpose of reentering federated city service. The board may reinstate the person from retirement if it finds that his or her age at the date of his application is at least six (6) months less than seventy (70) years of age. Upon such reinstatement, said person may be reemployed by the city, in the same manner as it employs persons who have not been retired hereunder, to render federated city service.

B. Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and the person shall again become a member of this plan as of the date of the reinstatement. Upon reinstatement the person shall regain credit for those years of service for which the person was entitled to credit as of the time he or she retired for service.

(Prior code § 2904.1408; 3.28.1180; Ords. 21265, 27838.)

**3.28.1180 Reemployment of retired member to perform city services other than federated city services.**

A. If a person who has been retired for service pursuant to the provisions of this Part 9 is retained or reemployed by the city, other than as an independent contractor or pursuant to Section 3.28.1190, to render any service which is not federated city service, said person's service retirement allowance shall be suspended as of the effective date of such reemployment and shall remain suspended while the person is retained or reemployed to perform such service. Upon cessation of such reemployment, the person's service retirement allowance shall be reinstated.

B. The provisions of this section shall not apply to the election or appointment of any retired person to the city council or to any board or commission of the city.

(Prior code § 2904.1409; 3.28.1190; Ords. 21265, 26355.)

**3.28.1190 Limited reemployment of retired person.**

A. A person who has been retired under this system, for service or disability, may be employed by the city to perform city service on a temporary basis without reinstatement from retirement where the employment does not exceed one hundred twenty working days or nine hundred sixty hours, whichever is greater, in any payroll calendar year. For the purposes of this provision, "payroll calendar year" means the twelve-month period commencing on the first day of the first pay period for active city employees.

B. The procedures for the employment of a retired person under this section shall be in accordance with the procedures set forth in the human resources administrative manual.

C. A person who retired for disability shall be eligible for employment under this section only if employment is not available under Part 10A of this chapter.

D. The employment of a person pursuant to this section shall not operate to reinstate the person as a member of this system. The person shall not earn service credit in this system for any period of such reemployment, nor shall either the person or the city make any contributions to this system on account of such employment.

E. The employment of a person pursuant to this section shall not operate to terminate or suspend the retirement allowance otherwise payable to such person.

F. A person employed pursuant to this section shall not be entitled to a disability retirement from the position in which the person is reemployed.

G. If the Internal Revenue Service determines that a reemployment program such as that described in this section can not be implemented without placing a retirement system out of conformity with the qualified plan requirements of the Internal Revenue Code (Title 26 of the United States Code), this section shall become inoperative and any employment of a person pursuant to this section shall be terminated immediately.

(Ord. 26355.)

## **Part 10**

### **RETIREMENT FOR DISABILITY**

#### **Sections:**

- 3.28.1200 Eligibility.
- 3.28.1210 Definitions.
- 3.28.1220 Disability retirement - On motion of retirement board.
- 3.28.1230 Disability retirement - On application - Persons authorized.
- 3.28.1240 Time limitation applicable to board's motion and application.
- 3.28.1250 Medical examinations.
- 3.28.1260 Disability retirement - Conditions for granting.
- 3.28.1270 Determination as to whether disability is service-connected.
- 3.28.1280 Service-connected disability retirement - Amount of allowance.
- 3.28.1290 Nonservice-connected disability retirement - Eligibility.
- 3.28.1300 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection A or B of Section 3.28.1290.
- 3.28.1310 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection C of Section 3.28.1290.
- 3.28.1320 Election by former member of Chapter 3.24 system to receive disability retirement allowance provided by Chapter 3.24 system in lieu of certain Chapter 3.28 benefits.
- 3.28.1325 Reports of earnings from outside occupation.
- 3.28.1330 Deductions - Recipient's earnings from outside occupation.

3.28.1340 Deductions - Recipient's earnings from nonfederated city service.

3.28.1350 Recipient's reentry into federated city service in position and class of positions other than that from which he or she was retired for disability.

3.28.1360 Member not to receive both service retirement and disability retirement.

3.28.1370 Medical examination of recipients - Allowance cancellation conditions.

3.28.1380 Reinstatement to duty.

3.28.1390 Refusal to accept reinstatement.

3.28.1400 Recipient attaining age fifty-five to be deemed permanently disabled.

3.28.1410 Failure or refusal to submit to medical examination.

3.28.1420 Situations where member is not entitled to disability retirement or disability retirement allowance.

3.28.1430 Payment of disability allowances to constitute return and withdrawal of contributions.

3.28.1440 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.

### **3.28.1200 Eligibility.**

No person shall be retired for disability under or pursuant to the provisions of this Chapter 3.28 unless he is eligible therefor under and pursuant to the provisions of this Part 10.

(Prior code § 2904.1450.)

### **3.28.1210 Definitions.**

As used in this Part 10:

A. "Disability," "incapacity for the performance of duty" and "incapacitated for the performance of duty," when used as a basis for retirement under this system, mean disability of a member, short of death, of permanent or extended and uncertain duration, occurring while such member is an employee of the city in the federated city service of the city, as a result of injury or disease (except that in case of a mental derangement the cause thereof, for purposes of this section only, shall be disregarded), which renders the member physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of the position then held by him and of any other position in the same classification of positions to which the city may offer to transfer him, as determined by the retirement board on the basis of competent medical opinion. It does not mean mere physical or mental inability to assume said responsibilities or perform said duties.

B. "Nonservice-connected disability" means a disability, as above defined, of a member, which is not a service-connected disability.

C. "Service-connected disability" means a disability, as above defined, of a member which arises and results from an injury or disease arising out of and in the course of the federated city service, rendered by the member, for which he is entitled to credit under the provisions of this system.

(Prior code §§ 2904.1451 - 2904.1453.)

**3.28.1220 Disability retirement - On motion of retirement board.**

A member who is eligible to retire for disability may be retired for disability, pursuant to and subject to the provisions of this Chapter 3.28, on the retirement board's own motion with or without a request or application therefor being made by the member or any other person.

(Prior code § 2904.1454.)

**3.28.1230 Disability retirement - On application - Persons authorized.**

A member who is eligible to retire for disability shall be retired for disability, pursuant to and subject to the provisions of this Part 10, by the retirement board upon application being made therefor by any of the following persons:

- A. The city manager;
- B. The head of the office or department in which the member is or was last employed; or
- C. The member, or any authorized person on his behalf.

(Prior code § 2904.1455.)

**3.28.1240 Time limitation applicable to board's motion and application.**

Anything elsewhere to the contrary notwithstanding, the retirement board shall not retire a member for disability, either on its own motion or upon application being made therefor, unless it does so while the member is still in federated city service, or within four months after the member's discontinuance of such service, or during the continuance of the member's disability if it continues after he ceases to render federated city service.

(Prior code § 2904.1456.)

**3.28.1250 Medical examinations.**

A. The retirement board on its own motion at any time may, and upon receipt of an application for disability retirement shall, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether he is disabled or incapacitated for the performance of duty, and to determine whether such disability or incapacity for performance of duty is a service-connected or nonservice-connected disability in those situations where the member's eligibility for disability retirement, or the amount of disability retirement allowance to which the member may be entitled, is dependent upon such determination. Such medical examination shall be made by one or more physicians or surgeons appointed by the board or designated by the board's medical director.

- B. In addition, the member may submit a medical report from the member's own physician or

surgeon. Where application for disability retirement is made by the member or on the member's behalf, a medical report by said member's private physician or surgeon may be submitted with the application. The board may require additional medical examinations or procure or require additional or other evidence before retiring a person for disability.

C. All medical information under the control of the city and the member, including reports in connection with workers compensation claims or proceedings to the extent permitted by law, shall be made available to the city's medical director and the retirement board upon their request.

(Prior code § 2904.1457; Ords. 19283, 26846.)

### **3.28.1260 Disability retirement - Conditions for granting.**

If the medical reports and other available evidence and information show to the satisfaction of the retirement board that the member is incapacitated for the performance of his duty, and if such member is otherwise eligible to retire for disability pursuant to the provisions of this Part 10, the board shall forthwith retire him for disability.

(Prior code § 2904.1458.)

### **3.28.1270 Determination as to whether disability is service - connected.**

If the medical examination and other available evidence and information show to the satisfaction of the retirement board that the disability is service-connected, it shall so find and declare. If the medical examination and other available information show to the satisfaction of the board that the disability is nonservice-connected, it shall so find and declare. Such finding and declaration shall govern in determining whether a disability is service-connected or nonservice-connected.

(Prior code § 2904.1459.)

### **3.28.1280 Service-connected disability retirement - Amount of allowance.**

A. Subject to other provisions of this Chapter 3.28, a member who, while he or she is an employee of the city in the federated city service is disabled and incapacitated for the performance of duty, may be retired by the retirement board pursuant to the provisions of this section for such disability, and shall be so retired upon application being made therefor, if said disability is a service-connected disability.

B. Subject to other provisions of this chapter, any member retired pursuant to the provisions of this section because of a service-connected disability shall thereafter be paid from the retirement fund, while he or she is disabled and incapacitated for the performance of duty as a result of such service-connected disability, a service-connected disability retirement allowance in an annual allowance equal to forty percent of the member's final compensation, plus two and one-half percent of the member's final compensation for each year of federated city service for which the member is entitled to credit under the provisions of this system in excess of the first sixteen years of service; provided however, that in no event shall said allowance be more than seventy-five percent of the member's final compensation, less the amounts specified in Sections 3.28.1320 and 3.28.1330 of this chapter.

(Prior code § 2904.1460; Ord. 26846.)

### **3.28.1290 Nonservice-connected disability retirement - Eligibility.**

Subject to other provisions of this Chapter 3.28, a member who, while an employee of the city in the federated city service, is disabled and incapacitated for the performance of duty may be retired by the retirement board pursuant to the provisions of this section for such disability and shall be so retired, upon application being made therefor, if such disability is a nonservice-connected disability and if, in addition, such member satisfies and meets all of the eligibility requirements set forth in any one of the following subsections:

A. The member is entitled to credit for five or more years of federated city service rendered after he or she became a member and while he or she was a member of this system; or

B. The member is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and such member's accumulated contributions in the retirement fund are five hundred dollars or more; or

C. The member is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.410, 3.28.420 or 3.28.430, and such member's accumulated contributions in the retirement fund are five hundred dollars or more.

(Prior code § 2904.1461; Ords. 21371, 23485.)

**3.28.1300 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection A or B of Section 3.28.1290.**

A. Subject to other provisions of this Chapter 3.28, a member who satisfies the eligibility requirements of subsection A. or B. of Section 3.28.1290 and is retired because of a nonservice-connected disability shall thereafter be paid from the retirement fund, while the person is disabled and incapacitated for the performance of duty as a result of such nonservice-connected disability, an annual nonservice-connected disability retirement allowance calculated in accordance with this Section 3.28.1300.

B. If the person became a member of this system prior to September 1, 1998, the nonservice-connected disability retirement allowance shall be the amount of the member's allowance if the member were retired for a service-connected disability pursuant to the provisions of Section 3.28.1280, less:

1. The deductions specified in Sections 3.28.1330 and 3.28.1340; and

2. In the case of a member who is under fifty-five years of age on the effective date of retirement, a sum equal to one-half percent times the number of years and/or fraction of years between the member's age on the effective date of retirement and fifty-five years, times the member's final compensation.

C. If the person became a member of this system on or after September 1, 1998, the nonservice-connected disability retirement allowance shall, subject to a maximum of seventy-five percent of the member's final compensation, be:

1. Twenty percent of the member's final compensation; plus

2. Two percent of the member's final compensation for each year of service credit in excess of six years but less than sixteen years; plus

3. Two and one-half percent of the member's final compensation for each year of service credit in excess of sixteen years; less

4. The deductions specified in Sections 3.28.1330 and 3.28.1340.

(Prior code § 2904.1462; Ord. 25612.)

**3.28.1310 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection C of Section 3.28.1290.**

Subject to other provisions of this Chapter 3.28, a member who is retired pursuant to the provisions of Section 3.28.1290 because of a nonservice-connected disability shall thereafter be paid from the retirement fund, while he is disabled and incapacitated for the performance of duty as a result of such nonservice-connected disability, as a nonservice-connected disability allowance, if and only if he does not satisfy the eligibility requirement set forth in subsections A. or B. of Section 3.28.1290 but does satisfy all of the eligibility requirements set forth in subsection C. of said Section 3.28.1290, an annual allowance equal to the amount hereinafter specified in subsection A. of this section, less the amount specified in subsection B. of this section, plus the amount specified in subsection C. of this section, less the deductions specified in subsection D. of this section, as follows:

A. An amount equal to two and one-half percent of his final compensation times the number of years of federated city service to which he is entitled to credit under this system which were rendered by him after he became and while he was a member of this system;

B. Less, if such member is under fifty-five years of age on the effective date of his retirement, a sum equal to one-half percent times the number of years and/or fraction of years between his age on the effective date of his retirement and fifty-five years, times his final compensation;

C. Plus an amount equal to what would be his disability retirement allowance, as of June 30, 1975, under the provisions of the Chapter 3.24 retirement system as it existed on said date (excepting the provisions of subsection B. of Section 3.24.1840 which provide for a minimum allowance, it being the intent of this subsection that the provisions of said subsection B. of Section 3.24.1840 be disregarded in computing the amount payable under this paragraph) if he were then eligible to retire thereunder for disability and did then retire thereunder for disability, with credit only for those years of federated city service to which he was entitled to credit under the Chapter 3.24 retirement system on June 30, 1975 (plus the years of federated city service which he had theretofore lost because of his withdrawal of accumulated contributions but which he reacquired by redepositing such contributions pursuant to the provisions of Section 3.28.780), and with accumulated contributions in the retirement system equal to those then credited to him in said system plus formerly withdrawn amounts redeposited by him pursuant to the provisions of Section 3.28.780;

D. Less the deductions specified in Sections 3.28.1320 and 3.28.1330.

(Prior code § 2904.1463.)

**3.28.1320 Election by former member of Chapter 3.24 system to receive disability retirement allowance provided by Chapter 3.24 system in lieu of certain Chapter 3.28 benefits.**

A. A member of this system who is eligible to retire for disability under the preceding sections of this Part 10 may elect, if he was a former member of the Chapter 3.24 retirement system and became a member of this system pursuant to the provisions of Sections 3.28.400, 3.28.410, 3.28.420 or 3.28.430 of this chapter to receive, while he is disabled and incapacitated for the performance of duty as a result of such disability, in lieu of any and all benefits to which he or his survivors or estate might otherwise be or become entitled to because of his retirement for disability or because of his death after retirement while on such disability retirement, such disability retirement allowance as he would be entitled to if he were still a member of the Chapter 3.24 system, as it existed on June 30, 1975, and retired thereunder for disability at the same age as that at which he is retiring pursuant to the provisions

of this Part 10, with credit for the number of years of federated city service for which he is entitled to credit under this system and with accumulated contributions equal to those credited to him in this system. A person making such election shall also be entitled to any right which he would have had, if he had retired under the Chapter 3.24 system, under the optional settlements provisions of the Chapter 3.24 system; and, if he exercises any rights under such optional settlements provisions, his named beneficiary shall receive, on his death while on such retirement, such benefits, if any, as such beneficiary should become entitled to under such optional settlements provisions because of his exercise of such rights.

B. Upon exercising such election, said person loses all right to any and all other benefits which he might have or be or become entitled to under other sections of this Chapter 3.28 because of his retirement, and none of his survivors nor his estate shall have any right to any benefits under other sections of this Chapter 3.28 because of his death occurring while on such retirement; provided and excepting, however, that the special death benefit provided by Section 3.28.1620 shall still be payable, on his death while on retirement, to his estate or named beneficiary.

(Prior code § 2904.1464.)

### **3.28.1325 Reports of earnings from outside occupation.**

A. As a condition of a disability retirement allowance from the retirement fund, a person who has been retired for disability and has not reached age fifty-five shall file written statements with the board which conform to the requirements of subsection B. below.

B. A recipient described in subsection A. shall file statements as described either in subsection 1. or in subsection 2.:

1. Monthly and annual statements.

a. Within ten days after the end of each calendar month, the recipient shall file a monthly statement of the total income and earnings received by the recipient during the reporting month from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings; and

b. On or before May 1 of each year, the recipient shall file a notarized declaration under penalty of perjury, in a form approved by the board, of the total income and earnings received by the recipient during the preceding calendar year, or any portion thereof, from any gainful occupation outside city service and the sources of such income and earnings.

2. Income tax returns.

a. Instead of the statements described in subsection 1., the recipient may file copies of the recipient's federal and state income tax returns and the recipient's W-2 and/or 1099 forms showing the total income and earnings received by the recipient from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings. Such tax returns and forms shall be filed on or before the first day of May following the tax reporting period.

b. If a recipient elects to file tax returns, the recipient shall provide written notice of such election to the board not later than the date the next monthly statement would otherwise be due.

c. If a recipient elects to file tax returns, the recipient shall file with the board a written statement of the recipient's projected reportable income and earnings for each calendar year, and the sources of such income and earnings. Such statement shall be filed on or before the tenth day of January in the applicable calendar year. The recipient may file an amended statement in any case



where there is a change in the projected income and earnings.

C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.

D. If a recipient described in subsection A. fails to furnish the information required by this section, the disability retirement allowance shall be discontinued until such time as the required information is furnished. When the required information is furnished, the disability retirement allowance shall be reinstated and allowances withheld pending receipt of the required information shall be paid, less any applicable deductions.

(Ord. 24916.)

### **3.28.1330 Deductions - Recipient's earnings from outside occupation.**

A. In any case where the recipient of a disability retirement allowance meets the following conditions, the recipient's disability retirement allowance shall be reduced as provided in subsection B. below:

1. The recipient has not reached age fifty-five; and
2. The recipient is still incapacitated for the performance of duty; and
3. The recipient is engaged in a gainful occupation other than service as an officer or employee of the city.

B. During the period the recipient is engaged in gainful employment, the recipient's disability retirement allowance shall be reduced to the amount which, when added to the recipient's income or earnings from such gainful occupation and when also added to all other applicable deductions, if any, required by other provisions of this Chapter 3.28, shall not exceed the amount of the maximum compensation earnable in such period by a person holding the position which the recipient held at the time of retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition. In no event, however, shall the disability retirement allowance payable for any period exceed the amount of disability retirement allowance to which the recipient would have been entitled for such period in the absence of this section.

C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.

D. Any overpayment of disability retirement allowance made to a recipient may be deducted from future allowances payable to the recipient or any beneficiary of the recipient or shall otherwise be collected from the recipient.

E. The following conditions shall apply in any case where, pursuant to Section 3.28.1325, the recipient has elected to file tax returns in lieu of monthly statements of income and earnings:

1. - Reductions in disability retirement allowances shall be made based upon the statement of projected reportable income and earnings filed by the recipient.
2. Any overpayment of disability retirement allowance made during the applicable tax reporting period may be deducted from future allowances in substantially equal monthly deductions over a period not to exceed twelve months. If the deductions are made as provided in this subsection E., the deductions shall include interest on the outstanding overpayment at the actuarial rate adopted by the board.

3. Any underpayment of disability retirement allowance made during the applicable tax reporting period shall be paid to the disability retirement allowance recipient in one lump sum within thirty days of the verification of the underpayment by the secretary to the board.

F. When the recipient of a disability retirement allowance reaches age fifty-five, the deductions described in this section shall cease except to the extent necessary to recover any overpayment.

(Prior code § 2904.1465; Ords. 20147, 24916.)

### **3.28.1340 Deductions - Recipient's earnings from nonfederated city service.**

A. Subject to the civil service rules, regulations and requirements of the city, the recipient of a disability retirement allowance may be reemployed by the city, in the city's discretion, in a position other than a position included in the federated city service, if he is not incapacitated for the performance of duty in such new position, notwithstanding the fact that he is still incapacitated for the performance of duty in the position held by him at the time of his retirement and in any other position in the same classification of positions as the one held by him at the time of his retirement.

B. If, prior to attaining the age of fifty-five years, such recipient should be so reemployed as aforesaid to render city service not included in federated city service, the disability retirement allowance payable to him for each period of time during which he is so reemployed, and during which he is still incapacitated for the performance of duty in the position held by him at the time of his retirement and in any other position in the same classification of positions as the one held by him at the time he was retired shall be reduced, until he attains fifty-five years of age, to an amount which, when added to the compensation earned by him in such period in such position, and when also added to all other applicable deductions, if any, required by other provisions of this Chapter 3.28, shall not exceed the amount of the maximum compensation earnable by a person holding during such period the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition as of the time of its abolition. In no event, however, shall the disability retirement allowance payable for any such period exceed the amount of disability retirement allowance which he would have been entitled to for such period in the absence of this section; and in no event shall such allowance continue to be paid after the recipient's incapacity for the performance of duty in the position held by him at the time he was retired, or in any other position in the same classification of positions as the one held by him at the time of his retirement, ceases. Upon such recipient attaining the age of fifty-five years, said deductions shall no longer be made.

(Prior code § 2904.1466.)

### **3.28.1350 Recipient's reentry into federated city service in position and class of positions other than that from which he or she was retired for disability.**

A. A person who has been retired for disability pursuant to any of the provisions of this Part 10 shall not be reemployed by the city to render any federated city service unless:

1. The person is first reinstated from disability retirement pursuant to the provisions of this section or the provisions of Section 3.28.1370; or
2. The person is reemployed pursuant to Section 3.28.1190.

B. A person who has been retired for disability pursuant to the provisions of this part may apply to the retirement board in writing for reinstatement from such disability retirement and for reentry into the federated city service in a position and class of positions other than the position and class of positions

from which the person was retired for disability. The board may reinstate the person from said disability retirement and permit the person's reentry into the federated city service in the new position and class of positions if it finds that based on medical and physical examination he or she is not incapacitated to perform the duties of the office or position in the federated city service to which it is proposed he or she be appointed.

C. Upon such reinstatement such person may be reemployed to render federated city service in the same manner as the city employs persons who have not been retired under this system.

D. Upon reinstatement from disability retirement as provided above, the disability retirement allowance of the reinstated person shall be cancelled forthwith and the person shall again become a member of this system as of the date of his or her reentry into the federated city service. Upon again becoming a member, the person shall regain credit for those years of service to which he or she was entitled to credit as of the time he or she retired for disability.

(Prior code § 2904.1467; Ords. 21265, 26355.)

### **3.28.1360 Member not to receive both service retirement and disability retirement.**

Notwithstanding anything contained in this Chapter 3.28 to the contrary, no member who is retired for service pursuant to the provisions of Part 9 of this chapter shall be eligible for or be entitled to retirement for any disability or for or to any benefits or allowances pursuant to the provisions of this Part 10 while he is so retired for service; and any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person being retired for service.

(Prior code § 2904.1468.)

### **3.28.1370 Medical examination of recipients - Allowance cancellation conditions.**

A. The retirement board may at any time order and require any recipient of a disability retirement allowance to undergo medical examination by one or more physicians or surgeons appointed or engaged by the board for that purpose at a reasonable time and place to be determined by the board.

B. Upon any such recipient's application for reinstatement to active duty, the board shall order and cause a medical examination to be made of such recipient by one or more other physicians or surgeons appointed or engaged by the board. Any such order may be serviced upon said recipient either by personal service or by depositing the same in the United States mail, postage prepaid, addressed to the member at his latest address on file in the office of the secretary of the board, at least ten days prior to the date upon which he is to report to the physician or surgeon for examination. The recipient of the disability allowance may submit a medical report by his own physician or surgeon. Upon the basis of such examination and other relevant evidence, the board shall determine whether the recipient is still incapacitated for the performance of duty, and if it finds that he is not, it shall so declare, whereupon, unless otherwise expressly provided elsewhere in this part, the disability retirement and disability allowance shall thereupon immediately cease and be deemed terminated.

(Prior code § 2904.1469.)

### **3.28.1380 Reinstatement to duty.**

If the board determines that the recipient of a disability allowance granted pursuant to the provisions of this part is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not yet fifty-five years of age, such person shall, subject to the civil service provisions of the city, and subject to the provisions of this chapter, be reinstated in the position

held by him at the time he retired for disability or in another position in the same classification of positions as the one held by him at the time he was retired with duties within his capacities.

No person shall be reinstated to duty if he was fifty-five or more years of age on the date that the board made its determination that he was no longer incapacitated for the performance of duty. Upon being reinstated to duty pursuant to the provisions of this section, said recipient shall again become a member of this system, and shall be entitled to credit for past service the same as if he had never been retired for disability.

(Prior code § 2904.1470.)

### **3.28.1390 Refusal to accept reinstatement.**

If, after the board finds that the recipient of a disability allowance is no longer incapacitated for duty, and after such person becomes entitled to reinstatement to duty as provided in Section 3.28.1370, such person fails to report for duty, although work is offered him in his prior position or classification of positions, or rejects an offer of reinstatement and return to duty, all rights granted him by this chapter shall thereupon be canceled, and neither he nor his survivors shall thereafter be entitled to any benefits provided by this Chapter 3.28.

(Prior code § 2904.1471.)

### **3.28.1400 Recipient attaining age fifty-five to be deemed permanently disabled.**

Anything elsewhere to the contrary notwithstanding, if a recipient of a disability allowance granted pursuant to the provisions of this Part 10 should, upon attaining the age of fifty-five years, still be incapacitated to perform the duties of the position held by him at the time of his retirement and of any other position in the same classification of positions as the one held by him at the time he was retired pursuant to the provisions of this part, he shall, for purposes of this chapter, upon attaining age fifty-five, be deemed permanently disabled and no longer be subject to recall to duty, and his disability retirement allowance may not thereafter be canceled.

(Prior code § 2904.1472.)

### **3.28.1410 Failure or refusal to submit to medical examination.**

If any recipient of the disability retirement allowance fails or refuses to submit to medical examination or examinations as ordered or required by the retirement board, the board may thereupon terminate said person's disability retirement and disability retirement allowance, in which event, subject to the following provisions, such person shall have no right to restoration to duty under or by virtue of any provisions of the chapter, nor shall he or any of his survivors nor his estate thereafter be entitled to any allowances or benefits under this system; provided, however, that if said person should apply for reinstatement of said disability retirement within one year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the board that his disability continues and has not ceased, the board may reinstate said disability retirement and disability allowance as of the date of the order of such reinstatement or as of such prior date which the board should find to be just and reasonable; and provided further, that if said person should die before having said disability retirement and disability retirement allowance reinstated as aforesaid and within one year from and after the date that the board terminated said disability retirement, then in that event the surviving spouse or surviving child or children of said deceased person or his estate may, within said one year from and after the date the board terminated such retirement allowance, apply to the board for such survivor's or death benefits, if any, as they would be entitled to if said deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased

person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased person's original disability continued to the time of his death, the board may grant to them such survivorship or death allowances or benefits as they would have been entitled to if the abovementioned disability retirement had not been terminated as aforesaid. In no event shall said disability retirement or disability retirement allowance be reinstated unless application therefor has been made within one year from and after the board terminated such retirement; and in no event shall any survivorship allowances or death benefits be granted to anyone pursuant to the provisions of this section unless application therefor has been made within one year from and after the date said board terminated said disability retirement.

(Prior code § 2904.1473.)

**3.28.1420 Situations where member is not entitled to disability retirement or disability retirement allowance.**

Anything elsewhere in this chapter to the contrary notwithstanding, no person shall be entitled to any disability retirement or to any disability retirement allowance under the provisions of this chapter in any of the following situations:

A. Where the person's disability occurred before the person became a member of this retirement system.

B. Where the person's disability occurs after the person ceases to be a member of this retirement system or after the person ceases to be an employee in the federated city service, except as provided in Section 3.28.2420.

C. Where the person's disability occurs while the person is on leave of absence from federated city service, including but not limited to situations where such leave of absence is granted for the performance of military, marine, naval or other duty or service for the United States of America or for any other nation, state, person or persons, or is granted for any other purpose or purposes except as follows:

1. The provisions of this paragraph C. shall not apply where the person's disability occurs while the person is on leave of absence with full city compensation and pay.

2. The provisions of this paragraph C. shall not apply where the person's disability occurs while the person is on leave of absence without compensation because of a city hall closure and the time on such leave qualifies as federated city service under Section 32.28.685.

(Prior code § 2904.1474; Ord. 24807.)

**3.28.1430 Payment of disability allowances to constitute return and withdrawal of contributions.**

Anything elsewhere in this chapter to the contrary notwithstanding, the payment to and receipt by any person of any disability retirement allowance or allowances shall constitute and be deemed to be a return to and withdrawal by such person, to the extent of the amount of such allowance or allowances so paid to and received by him, of any or all contributions theretofore made by such person to the retirement fund prior to the date he was retired for disability, and the amount of such allowance or allowances so paid to and received by him shall be deducted from the amount of accumulated contributions in the fund which are credited to him; provided and excepting, however, that he shall be deemed to still have at least five hundred dollars in the fund for the purposes of qualifying for benefits under this system. Nothing herein contained, however, shall be deemed to restrict the amount of

disability allowances payable to any such person to the amount of contributions theretofore contributed by him to the fund, it being the intent that such allowances shall continue to be paid to such person as provided by and subject to other provisions of this part even after all contributions standing to his credit shall have been so withdrawn and exhausted.

(Prior code § 2904.1475.)

**3.28.1440 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.**

Anything elsewhere in this chapter to the contrary notwithstanding, if the disability for which a person has been granted a disability retirement or disability retirement allowance pursuant to the provisions of this chapter should cease, and if in addition such person should be then ready, willing and able to be reinstated to duty in and to assume and perform the responsibilities and duties of the position from which he was retired for disability and of any other position in the same class of positions, then in that event such person shall nonetheless continue to be deemed retired for the disability which no longer exists, and continue to be entitled to such disability retirement allowance, if any, as he would be entitled to under the provisions of this part if the disability for which he was retired had not ceased, until he is reinstated to duty in the position from which he was retired or in any other position in the same class of positions, or until he rejects an offer to reinstatement in any such position, or until he refuses or fails to report to duty in any such position when requested to do so, or becomes unable for any reason to accept reinstatement to duty in, or to assume and perform the responsibilities and duties of, the position from which in the same class of positions, whichever is the earlier; provided, however, that nothing herein in this section contained shall be deemed to deprive the retirement board of any rights which it might otherwise have under other provisions of this chapter to cancel, terminate, suspend or reduce said retirement or retirement allowance for any reason or reason other than the fact that said disability has ceased.

(Prior code § 2904.1476.)

**Part 10A REEMPLOYMENT OF DISABILITY RETIREE**

Sections:

- 3.28.1441 Applicability.
- 3.28.1442 Reemployment of disability retiree in city service - Eligibility.
- 3.28.1443 Reemployment; disability allowance suspended; credit to city.
- 3.28.1444 Credit for prior years.
- 3.28.1445 Medical examination of recipient - Cancellation of allowance.
- 3.28.1446 Reinstatement to duty.
- 3.28.1447 Refusal to accept reinstatement.
- 3.28.1448 Reserved.
- 3.28.1449 Failure or refusal to submit to medical examination.

- 3.28.1449.1 Payment of disability allowances to constitute return and withdrawal of contributions.
- 3.28.1449.2 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.
- 3.28.1449.3 Disability while reemployed in new class of city positions.
- 3.28.1449.4 Member not to receive both service retirement and disability retirement benefits.
- 3.28.1449.5 Reemployment conditions upon cessation of disability.
- 3.28.1449.6 Election to allow accumulated contributions to remain in fund.
- 3.28.1449.7 Payment to member's estate of balance of member's accumulated contribution, applied to reemployed disability retiree.
- 3.28.1449.8 Retirement for service.
- 3.28.1449.9 Applicability.
- 3.28.1449.10 Reinstatement from retirement.
- 3.28.1449.11 Eligibility for subsequent disability retirement.
- 3.28.1449.12 Reemployed member not to receive concurrent disability retirements, nor service retirement.
- 3.28.1449.13 Death before retirement.

**3.28.1441 Applicability.**

The provisions of this part shall be applicable only where, prior to reemployment in city service, the affected disability retiree has, in writing, filed with the retirement board, election to be governed by this part, and the city has given written notification to such retiree that it also so elects.

Notwithstanding anything contained in Chapter 3.20 through Chapter 3.28 to the contrary, this Part 10A shall supersede only inconsistent or conflicting provisions of any part therein, unless an exception is expressly made within this part. Except to the extent such provisions of Chapter 3.20 through Chapter 3.28 are in conflict or inconsistent, the city and the affected disability retiree, and the survivors and estate thereof, shall each be governed by such other provisions.

(Ord. 19839.)

**3.28.1442 Reemployment of disability retiree in city service - Eligibility.**

A. Subject to the civil service rules, regulations and requirements of the city, a person who has been retired for disability pursuant to Part 17 or Part 18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code may be reemployed from time to time in city service pursuant to voluntary agreement of both the city and such person, in any positions or offices other than the position or office held by that person at the time of such retirement whether in the same or another classification, if, based on medical and

physical examination, the person is not incapacitated for performance of duty in any such new position or office, notwithstanding that he or she is still incapacitated for performance of duty in the position or office held at the time of such retirement and in any other office or position in the same classification of offices or positions as the one held at the time of such retirement.

B. Upon such reentry into city service, the person's disability retirement shall be suspended and the person shall be reinstated to membership in this plan and his/her membership herein pursuant to this paragraph shall continue, subject to other provisions of this part, until the cessation of the person's disability for performance of duty in the office or position held at the time of his or her disability retirement, or in any other office or position in the same classification of offices or positions within which he or she was included at such retirement, unless the office or position which the person held upon such cessation of disability is one which would qualify him or her for membership by virtue of other provisions of this part. In the latter event, the person's membership shall continue as long as he or she occupies such office or position, or any other office or position to which the person is subsequently appointed which similarly qualifies him or her for membership.

(Ord. 19839; Ord. 27838.)

### **3.28.1443 Reemployment; disability allowance suspended; credit to city.**

A. Upon a person's reentry into city service pursuant to Section 3.28.1442, the disability allowance granted pursuant to Part 17 or Part 18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code shall be suspended and the city shall compensate the person at the greater of:

1. The rate of compensation of the position in which the person is reemployed; or
2. The rate of compensation of the position from which the person retired at the time of such retirement.

B. In any case where the rate of compensation of the position from which the person retired exceeds the rate of compensation of the position in which the person is reemployed, the city shall receive a credit against city contributions otherwise due to the retirement fund. The credit shall be equivalent to that portion of the compensation paid to the person during the suspension of the person's disability retirement that exceeds the rate of compensation of the position in which the person is reemployed.

C. During the period the person's disability retirement is suspended and the person is reemployed, the person's "compensation earnable" shall be based upon the position of reemployment.

(Ord. 19839; Ord. 27838.)

### **3.28.1444 Credit for prior years.**

Upon reinstatement of membership in this system under Part 10A, the recipient of a disability retirement allowance shall become a member of this system and regain credit for those years of service to which he was entitled at the time he retired for disability.

(Ord. 19839.)

### **3.28.1445 Medical examination of recipient - Cancellation of allowance.**

The retirement board may at any time order and require any recipient of a disability retirement allowance to undergo medical examination by one or more physicians or surgeons appointed or



engaged by the board for that purpose at a reasonable time and place to be determined by the board.

Upon any such recipient's application for reinstatement from disability retirement to active duty, the board shall order and cause a medical examination to be made of such recipient by one or more other physicians or surgeons appointed or engaged by the board. Any such order may be served upon said recipient either by personal service or by depositing the same in the United States mail, postage prepaid, addressed to the member at his latest address on file in the office of the secretary of the board, at least ten days prior to the date upon which he is to report to the physician or surgeon for examination. The recipient of the disability allowance may submit a medical report by his own physician or surgeon. Upon the basis of such examination and other relevant evidence, the board shall determine whether the recipient is still incapacitated for the performance of duty in the position or office held by him at the time he retired for disability, or in another position or office in the same classification of positions or offices as the one in which he was included at the time he was so retired. If the board finds that he is not so incapacitated, it shall make a written finding to that effect; whereupon, unless expressly provided elsewhere in this Part 10A, the disability retirement allowance shall thereupon immediately cease and be terminated.

(Ord. 19839.)

### **3.28.1446 Reinstatement to duty.**

If, on the motion of the board or application of a disability retiree, the board determines that the recipient of a disability allowance granted pursuant to the provisions of this part is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not eligible for a service retirement, such person shall, subject to the civil service provisions of the city, and subject to the provisions of this part, be reinstated in the position held by him or her at the time he or she retired for disability or in another position in the same classification of positions as the one held by him or her at the time he or she was retired with duties within his capacities. No person shall be required to be reinstated to duty if he or she was eligible for a service retirement on the date that the board made its determination that the person was no longer incapacitated for the performance of duty. Upon being reinstated to duty pursuant to the provisions of this section, the person shall again become a member of this system by reason of such reinstatement and shall be entitled to credit for past service, the same as if he or she had never been retired for disability.

(Ord. 19839; Ord. 27838.)

### **3.28.1447 Refusal to accept reinstatement.**

If, after the board finds that the recipient of a disability allowance is no longer incapacitated for duty, and after such person becomes entitled to reinstatement to duty as provided in Section 3.28.1446 such person fails to report for duty, although work is offered him in his prior position or classification of positions, or rejects an offer of reinstatement and return to duty, all rights granted him by this part shall thereupon be canceled and neither he nor his survivors shall thereafter be entitled to any benefits provided by Part 1 of Chapter 3.28 except as follows: Such person shall be deemed to be a person appointed under Section 3.28.450 effective for the first time upon reemployment, and all qualifications for and the nature and extent of all benefits hereunder shall be so determined solely upon the compensation and service provided on and after such reemployment.

(Ord. 19839.)

### **3.28.1448 Reserved.**

**Editor's note:** Ord. 27838, § 15, adopted September 12, 2006, repealed § 3.28.1448, which pertained to recipient attaining age fifty-five to be deemed permanently disabled.

### **3.28.1449 Failure or refusal to submit to medical examination.**

If any recipient of a disability retirement allowance fails or refuses to submit to medical examination or examinations as ordered or required by the retirement board, the board may thereupon terminate said person's disability retirement and disability retirement allowance, in which event, subject to the following provisions, such person shall have no right to reinstatement to duty under or by virtue of any provisions of this part, nor shall he or any of his survivors nor his estate thereafter be entitled to any allowances or benefits under this system; provided, however, that if said person should apply for reinstatement of said disability retirement within one year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the board that his disability continues and has not ceased, the board may reinstate said disability retirement and disability allowance as of the date of the order of such reinstatement or as of such prior date which the board should find to be just and reasonable; and provided further, that if said person should die before having said disability retirement and disability retirement allowance reinstated as aforesaid and within one year from and after the date that the board terminated said disability retirement, then in that event, the surviving spouse or surviving child or children of said deceased person or his estate may, within said one year from and after the date said board terminated said retirement allowance, apply to said board for such survivor's or death benefits, if any, as they would be entitled to if said deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased person's original disability continued to the time of his death, the board may grant to them such survivorship or death allowances or benefits as they would have been entitled to if the above-mentioned disability retirement had not been terminated as aforesaid. In no event shall said disability retirement or disability retirement allowance be reinstated unless application therefor has been made within one year from and after the board terminated such retirement; and in no event shall any survivorship allowances or death benefits be granted to anyone pursuant to the provisions of this section unless application therefor has been made within one year from and after the date said board terminated said disability retirement.

(Ord. 19839.)

### **3.28.1449.1 Payment of disability allowances to constitute return and withdrawal of contributions.**

Anything elsewhere in this part to the contrary notwithstanding, the payment to, and receipt by, any person of any disability retirement allowance or allowances shall constitute and be deemed to be a return to and withdrawal by such person, to the extent of the amount of such allowance or allowances so paid to and received by him, of any and all contributions theretofore made by such person to the retirement fund prior to the date he was retired for disability, and the amount of such allowance or allowances so paid to and received by him shall be deducted from the amount of accumulated contributions in the fund which are credited to him; provided and excepting, however, that he shall be deemed to still have at least five hundred dollars in said fund for the purposes of qualifying for benefits under this system. Nothing herein contained, however, shall be deemed to restrict the amount of disability allowance payable to any such person to the amount of contributions theretofore contributed by him to the fund, it being the intent that such allowances shall continue to be paid to such person as provided by and subject to other provisions of this part even after all contributions standing to his credit shall have been so withdrawn and exhausted.

(Ord. 19839.)

**3.28.1449.2 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.**

Anything elsewhere in this part to the contrary notwithstanding, if the disability for which a person has been granted a disability retirement or disability retirement allowance pursuant to the provisions of this part should cease, and if, in addition, such person should be then ready, willing and able to be reinstated to duty in and to assume and perform the responsibilities and duties of the position from which he was retired for disability or of any other position in the same class of positions, then in that event such person shall nonetheless continue to be deemed retired for the disability which no longer exists, and continue to be entitled to such disability retirement allowance, if any, as he would be entitled to under the provisions of this part of the disability for which he was retired had not ceased, until he is reinstated to duty in the position from which he was retired or in any other position in the same class of positions, or until he rejects an offer of reinstatement in any such position, or until he refuses or fails to report to duty in any such position when requested to do so, or becomes unable for any reason to accept reinstatement to duty in, or to assume and perform the responsibilities and duties of the position from which he was retired or of any other position in the same class of positions, whichever is the earlier; provided, however, that nothing herein in this section contained shall be deemed to deprive the retirement board of any rights which it might otherwise have under other provisions of this part to cancel, terminate, suspend or reduce said retirement or retirement allowance for any reason or reasons other than the fact that said disability has ceased.

(Ord. 19839.)

**3.28.1449.3 Disability while reemployed in new class of city positions.**

If a recipient of a disability retirement allowance is reemployed in city service in a position other than that held by him at the time of his retirement and other than one in the same classification of positions as the one held by him at the time of his retirement, and if such recipient should become incapacitated for the performance of duty in such new position before his disability for the performance of duty in the position originally held by him or in any other position in the same classification as the position originally held by him at the time he was first retired ceases, thereupon, either:

A. He shall resign or be discharged from his latest position, in which event he shall continue to have all such rights to a disability retirement allowance under this part as he had prior to being reemployed by the city; or

B. He may, if he so elects by giving written notice of such election to the retirement board within thirty days from and after cessation of active duty in his latest position, and if he is otherwise eligible for the same under other provisions of this part, be retired for disability from his latest position, in which event his former disability retirement and retirement allowance shall be automatically canceled and terminated as of the date of his new retirement.

If he is retired from his latest position pursuant to the above provisions of paragraph B, and if, thereafter, the disability because of which he was given his latest retirement should cease and all retirement allowances payable to him because of his latest disability retirement should cease, but his disability for the performance of duty in the position originally held by him or in any other position in the same classification of positions originally held by him has not ceased, then his original disability retirement and original disability retirement allowance shall be reinstated, to continue so long as his original disability exists. Such original disability allowance shall be in the amount last paid prior to its termination and shall not be modified solely by reason of the additional period of time succeeding its original determination during which the recipient has been reemployed under this Part 10A, nor shall it be increased or decreased by reason of any compensation earnable during the period of reemployment.

If he is retired from his latest position pursuant to the above provisions of paragraph B, and if, thereafter, his disability for his original position or class of positions should cease, then his latest disability retirement and all disability retirement allowances shall automatically cease and terminate and he shall have such rights to reinstatement to duty in his original position or class as are provided in Section 3.28.1446.

In no event shall any person be entitled to more than one allowance at or for any one time.

(Ord. 19839.)

**3.28.1449.4 Member not to receive both service retirement and disability retirement benefits.**

Notwithstanding anything contained in this part to the contrary, no member who is retired for service pursuant to the provisions of Part 9 shall be eligible for or be entitled to retirement for any disability or for or to any benefits or allowances pursuant to the provisions of this Part 10A while he is so retired for service. Any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person's being retired for service.

(Ord. 19839.)

**3.28.1449.5 Reemployment conditions upon cessation of disability.**

Notwithstanding anything to the contrary in Chapter 3.20 through Chapter 3.28 of this Code, upon written election by the city and a disability retiree reemployed under this Part 10A, such retiree may at any time prior to six months before age seventy and notwithstanding the limitations in Section 3.28.1448 be reinstated from disability retirement and the disability retirement allowance may be terminated in accordance with procedures and on the grounds set forth in Sections 3.28.1446 and 3.28.1449.2, notwithstanding that city does not offer the person the same position or office from which he was retired, or a position or office in the same classification of offices or positions which included him at such time provided that city offers and the person accepts the latest position or office of reemployment in which the person is employed; thereafter, for the purposes of this Part 10A and Section 3.28.030.06, compensation earnable for such position or office shall be the regular compensation therefor undiminished by such amounts as would otherwise have been paid as a disability retirement allowance to such person.

(Ord. 19839.)

**3.28.1449.6 Election to allow accumulated contributions to remain in fund.**

A. The provisions of Section 3.28.580 under which an election is an election granted to the persons specified therein to allow accumulated contributions to remain on deposit with the fund shall be deemed to grant a similar election to a Part 1, Chapter 3.24 disability retiree upon and after his reemployment by the city under this Part 10A. For the purpose of this Part 10A a former member of the Part 1, Chapter 3.24 retirement system reemployed hereunder while on disability retirement but receiving a disability retirement allowance shall be deemed a person reinstated from Part 1, Chapter 3.24 disability retirement within the meaning of Sections 3.28.420, 3.28.480.C. and 3.28.480.F. notwithstanding that the disability retirement and disability retirement allowance continue and neither cease nor are canceled, and there is no reinstatement from disability under Section 3.24.1290 or 3.24.1300.

B. Retirees reemployed under this Part 10A, other than those whose membership entitles them to the election mentioned in subsection A. of this section, shall upon and after such reemployment have

such election to allow accumulated contributions to remain in the fund as is provided in Section 3.28.590.

(Ord. 19839.)

**3.28.1449.7 Payment to member's estate of balance of member's accumulated contribution, applied to reemployed disability retiree.**

The provisions of Section 3.28.1070 shall apply to a disability retiree reemployed under this Part 10A while receiving a disability retirement allowance; however for the purpose of this Part 10A, the term "death before retirement" as used therein shall mean and refer to the death of such disability retiree, either (a) while reemployed and before retirement for service or for a new disability arising during the period of reemployment; or (b) after a voluntary or involuntary termination of service of such retiree from city service, other than by service retirement or the new disability retirement described in subdivision (a), and such retiree was qualified to, and did in fact, leave on deposit all his accumulated normal contributions and accumulated prior service contributions.

(Ord. 19839.)

**3.28.1449.8 Retirement for service.**

A person reemployed under this Part 10A is not eligible for a service retirement under the Part 1 of Chapter 3.24 or Part 1 of Chapter 3.28 plan by reason of disability retirement or the receipt of a disability retirement allowance under either such plan; however such disability retirement and allowance therefore shall immediately cease and terminate upon service retirement under either such plan.

Whenever in Part 9 of the Chapter 3.28 plan provision is made for service retirement of a person who became a member of the Chapter 3.28 system pursuant to Section 3.28.420 of this Code, a Chapter 3.24 disability retiree reemployed hereunder shall be deemed to have qualified for and become a member of the Chapter 3.28 plan for the purpose of this part and section notwithstanding that his disability retirement and disability retirement allowance continue and he has not been reinstated from such disability retirement.

(Ord. 19839.)

**3.28.1449.9 Applicability.**

A. A person retired for service pursuant to any of the provisions of Part 9 or 10A of the Chapter 3.28 plan shall not be retained or reemployed by the city, except as an independent contractor or pursuant to Section 3.28.1190, to render any city service unless the person is first reinstated from service retirement pursuant to the provisions of Part 9 of the plan.

B. A person who has retired for service pursuant to the provisions of Part 9 or Part 10A of this chapter may be retained to render service to the city which is not federated city service only as provided in Section 3.28.1180.

(Ords. 19839, 26355.)

**3.28.1449.10 Reinstatement from retirement.**

A person who has been retired for service pursuant to the provisions of this part may apply to the retirement board, in writing, for reinstatement from such retirement for the purpose of reentering city

service. The board may reinstate him from retirement if it finds (a) that his age at the date of his application is at least six months less than seventy years of age; (b) that, based on medical and physical examination, he is not incapacitated to perform the duties of the office or position in the city service to which it is proposed he be appointed. Upon such reinstatement, said person may be reemployed by the city, in the same manner as it employs persons who have not been retired hereunder, to render city service.

Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and he shall again become a member of this system as of the date of his reinstatement. Upon reinstatement he shall regain credit for those years of service to which he was entitled to credit as of the time he retired for service.

(Ord. 19839.)

### **3.28.1449.11 Eligibility for subsequent disability retirement.**

Retirees reemployed under this Part 10A shall be eligible for service connected disability retirement under Section 3.28.1280 and for nonservice-connected disability retirement under Section 3.28.1290 where such disability occurs after reemployment. If not otherwise qualified under subsections A. or B. thereof for the purpose of this Part 10A, a former member of the Chapter 3.24 retirement system reemployed hereunder while on disability retirement and receiving a disability retirement allowance with accumulated contributions of five hundred dollars or more in the retirement fund shall be deemed a person reinstated within the meaning of Sections 3.28.1290.C., 3.28.420, 3.28.480.C., 3.28.480.F. and 3.28.420 as amended in Section 3.28.1320, notwithstanding that the disability retirement and disability retirement allowance continue, and neither cease nor are canceled, and there is no reinstatement from disability under Section 3.24.1290 or 3.24.1300.

(Ord. 19839.)

### **3.28.1449.12 Reemployed member not to receive concurrent disability retirements, nor service retirement.**

Notwithstanding anything to the contrary in Chapter 3.20 through Chapter 3.28 of this Code, no member is entitled to or shall receive two concurrent disability retirement allowances under any part of said Chapter 3.20 through Chapter 3.28. Further, no member who is retired for service pursuant to the provisions of Part 9 shall be eligible for or entitled to any retirement for any disability, or for or to any benefits or allowances pursuant to the provisions of this Part 10A while he is so retired for service; and any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person being retired for service.

(Ord. 19839.)

### **3.28.1449.13 Death before retirement.**

Part 11 of the Chapter 3.28 plan shall apply to a disability retiree reemployed under this Part 10A; provided, however, that under Section 3.28.1460, the survivors and estate of such disability retiree shall not be disqualified from any such benefits by reason of the fact that the person so reemployed continued on disability retirement and was receiving a disability retirement allowance during reemployment. For the purpose of this Part 10A, the term "death before retirement" as used in Section 3.28.1460 means the death of a disability retiree who has become a member of this system by reemployment under Part 10A, occurring while said person is a member of this system and before he retires for service or a disability occurring after such reemployment.

For the purpose of Section 3.28.1490 of said Part 11, a Chapter 3.28 disability retiree reemployed under this Part 10A shall be deemed to be a member of this system under Section 3.28.420, notwithstanding that his disability retirement and disability retirement allowance continue and he has not been reinstated from disability retirement.

(Ord. 19839.)

## **Part 11 DEATH BEFORE RETIREMENT**

### **Sections:**

- 3.28.1450 Applicability of Part 11 provisions.
- 3.28.1460 Definitions.
- 3.28.1470 Eligibility for allowance.
- 3.28.1480 Amount of allowance to spouse, domestic partner or children if they are eligible under Section 3.28.1470.
- 3.28.1490 Benefits payable where deceased member was formerly a member of Chapter 3.24 retirement system and became a member of this system under Sections 3.28.410, 3.28.420, or 3.28.430 and surviving spouse, surviving domestic partner or children are not eligible for allowance under Sections 3.28.1470 and 3.28.1480.
- 3.28.1500 Death benefit - Description and conditions.
- 3.28.1510 Death benefit - Election for payment in installments.
- 3.28.1520 Surviving child's or children's allowances - How paid.
- 3.28.1525 Surviving children's allowances - Payment to custodian or trustee.
- 3.28.1530 Posthumous children.

### **3.28.1450 Applicability of Part 11 provisions.**

Except as may be otherwise specifically provided by other provisions of this Chapter 3.28, the provisions of this Part 11 shall apply only if and when a member of this system dies while he is a member of this system and before being retired for service or disability (or, if he has previously been retired but later reinstated to federated city service and again becomes a member of this system, while he is again a member and before he again retires for service or disability).

(Prior code § 2904.1500.)

### **3.28.1460 Definitions.**

As used in this Part 11:

A. "Death before retirement" means death of a member of this system while a member of this system and before retirement for service or disability. If a member should die after reinstatement from retirement and while a member of this system but before he or she again retires, such member's death shall be deemed to be "death before retirement."

B. "Nonservice-connected death" means death of a member which is not a service-connected death.

C. "Service-connected death" means death of a member which arises or results from an injury or disease arising out of and in the course of the federated city service for which such deceased member was entitled to credit under this system.

D. "Surviving child" and "surviving children" mean such child or children of a deceased member that meet and satisfy all of the following conditions and requirements:

1. The child survives the member's death; and
2. The child is neither married nor a member of a registered domestic partnership at the time of the member's death; and
3. The child is under the age of eighteen years at the time of the member's death; and
4. If the child is an adopted child of the member, the adoption was completed pursuant to law prior to the member's death. A child who has been married, but whose marriage has been dissolved by divorce or death, shall not be deemed to be a surviving child as said term is used in this Part 11. A child who has been a member of a registered domestic partnership, but whose partnership has been terminated through a proceeding for dissolution or by filing a notice of termination of domestic partnership, or by death, shall not be deemed to be a surviving child as said term is used in this Part 11.

E. "Surviving spouse" means the person to whom a member was married at the time of the member's death who survives the member's death, and none other.

F. "Surviving domestic partner" means the person:

1. With whom a member, at the time of the member's death, had established a registered domestic partnership by filing a declaration of domestic partnership with the secretary of state pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2; and
2. Who survives the member's death.

(Prior code §§ 2904.1501 - 2904.1505; Ords. 23806, 27521.)

### **3.28.1470 Eligibility for allowance.**

The benefits hereinafter specified in Section 3.28.1480 shall be payable to the persons specified in such section in each of the following situations, and none other:

A. Upon the death before retirement of a member who at the time of death was entitled to credit under this system for five or more years of federated city service rendered after June 30, 1975, and while he or she was a member of this system;

B. Upon the death before retirement of a member who was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section



3.28.400 and who, in addition, has five hundred dollars or more of accumulated contributions in the retirement fund at the time of death;

C. Upon the death before retirement of any other member, regardless of amount of service or accumulated contributions, if such death is found and determined by the retirement board to be a service-connected death as such is defined in this Part 11.

(Prior code § 2904.1506; Ords. 21371, 23485.)

**3.28.1480 Amount of allowance to spouse, domestic partner or children if they are eligible under Section 3.28.1470.**

Allowances payable to those persons only who are eligible for an allowance under the provisions of Section 3.28.1470 shall be as follows:

A. Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1470, the surviving spouse or surviving domestic partner, if any, of such member shall thereafter be entitled to receive and be paid, from the retirement fund, the following annual allowance.

1. If the deceased as of the time of his or her death, had attained the minimum age for service retirement and was credited with twenty or more years of federated city service, the surviving spouse or surviving domestic partner shall be entitled to receive said allowance until the surviving spouse or surviving domestic partner dies.

2. If the deceased, as of the time of his or her death, had not attained the minimum age for service retirement or was not credited with twenty or more years of federated city service, the surviving spouse or surviving domestic partner shall be entitled to receive said allowance until the surviving spouse or surviving domestic partner dies or marries or establishes a subsequent registered domestic partnership, whichever is earlier.

3. Said annual allowance shall be equal to two and one-half percent of the deceased member's final compensation times the number of years of federated city service for which the deceased member was entitled to credit under the retirement system at the time of the deceased member's death; provided and excepting, however, that:

a. Such annual allowance shall never be more than seventy-five percent of the deceased member's final compensation; and

b. Such annual allowance shall not be less than forty percent of the deceased member's final compensation if the deceased member at the time of death was in the employ of the city for the purpose of rendering federated city service and such employment had not been terminated by resignation, discharge or layoff.

B. Subject to other provisions of this chapter, in any of the situations specified in Section 3.28.1470, if, at the time of said member's death, there is no surviving spouse or surviving domestic partner but there is or are one or more eligible surviving children, the following annual allowance shall be paid to said child or children, as follows:

1. If there is only one eligible surviving child, such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner under subsection A. of this section if there had been a surviving spouse or surviving domestic partner.

2. If there are two or more eligible surviving children, each surviving child thereafter in existence shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years or marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which would have been payable to the surviving spouse or surviving domestic partner under subsection A. of this section if there had been a surviving spouse or surviving domestic partner which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:

a. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner under subsection A of this section if there were a surviving spouse or surviving domestic partner; and

b. The total annual allowances payable to all children shall never exceed seventy-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner if there were a surviving spouse or surviving domestic partner.

C. Subject to other provisions of this chapter, in any of the situations specified in Section 3.28.1470, if at the time of said member's death there is a surviving spouse or surviving domestic partner but payment of an annual allowance to said surviving spouse or surviving domestic partner ceases because of his or her death or marriage or because he or she has established a subsequent registered domestic partnership, and if at the time of cessation of said surviving spouse's or surviving domestic partner's allowance there is or are one or more eligible surviving child or children, then in such event, the following annual allowance or allowances shall be payable, upon cessation of said surviving spouse's or surviving domestic partner's allowance, to the eligible surviving child or children then in existence, as follows:

1. If only one eligible surviving child exists after the surviving spouse's or surviving domestic partner's allowance ceases, such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance which was theretofore payable under subsection A. of this section to the surviving spouse or surviving domestic partner.

2. If two or more eligible surviving children exist after the surviving spouse's or surviving domestic partner's allowance ceases, each such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which the surviving spouse or surviving domestic partner was theretofore entitled to receive under subsection A. of this section, which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:

a. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance theretofore payable under subsection A of this section to the surviving spouse or surviving domestic partner; and

b. The total annual allowances payable to all the children shall never exceed seventy-five percent of the annual allowance theretofore payable under subsection A of this section to the surviving spouse or surviving domestic partner.

(Prior code § 2904.1507; Ord. 27521.)

**3.28.1490 Benefits payable where deceased member was formerly a member of Chapter 3.24 retirement system and became a member of this system under Sections 3.28.410, 3.28.420, or 3.28.430 and surviving spouse, surviving domestic partner or children are not eligible for allowance under Sections 3.28.1470 and 3.28.1480.**

Subject to other provisions of this Chapter 3.28, upon death before retirement of a member who formerly was a member of the Chapter 3.24 retirement system and who became a member of this system under and pursuant to the provisions of Sections 3.28.410, 3.28.420, 3.28.430, if at the time of his or her death said member was credited with accumulated contributions of five hundred dollars or more, the following benefits shall be payable and shall be paid, from the retirement fund, to the following persons in the following circumstances:

A. If at the time of said member's death there is or are a surviving spouse, surviving domestic partner or surviving child or children but none of them is entitled to an allowance under and pursuant to the provisions of Sections 3.28.1470 and 3.28.1480, and if, in addition, the deceased member, as of the time of his or her death, had attained the minimum age for voluntary service retirement and was entitled to credit for twenty or more years of federated city service, an annual allowance, equal to one-half of the unmodified retirement allowance which said member would have been entitled to if he or she had retired for service on the date of death instead of dying, shall be payable as follows to the following persons:

1. If the deceased is survived by a surviving spouse or surviving domestic partner, said allowance shall be paid to the surviving spouse or surviving domestic partner until he or she dies.
2. If there is no surviving spouse or surviving domestic partner but there is only one eligible child, said allowance shall be paid to the surviving child until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier.
3. If there is no surviving spouse or surviving domestic partner but there are two or more eligible surviving children, each surviving child shall be paid, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which would have been payable to a surviving spouse or surviving domestic partner if he or she had existed which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable.
4. If there is a surviving spouse or surviving domestic partner but he or she dies and at the time of the death there is only one eligible surviving child, such child shall thereafter be paid, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, the same annual allowance as was theretofore paid to the surviving spouse or surviving domestic partner.
5. If there is a surviving spouse or surviving domestic partner but he or she dies and at the time of the death there are two or more eligible surviving children, each such child shall thereafter be paid, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance theretofore paid to the surviving spouse or surviving domestic partner as one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable.
6. If at the time of said member's death there is no surviving spouse, no surviving domestic partner, and no eligible surviving child or children, no allowance shall be payable under this section.

B. If the amount of all allowances paid or payable under the foregoing provisions of this section is less than the amount of the death benefit which would be payable under the provisions of Section 3.28.1500 to the estate or beneficiary of the deceased member in the circumstances specified in such

Section 3.28.1500, then in such event the amount of said death benefit less the total amount of all allowances paid and payable under the foregoing provisions of this section shall be paid, when no allowances are any longer payable under this section, to such child or children of the deceased member as may then exist who no longer are entitled to an allowance under the foregoing provisions of this section, or, if there are no such children at such time, to the estate of said deceased member.

C. The benefits hereinabove provided in this section are in lieu of the death benefits which would be payable to the estate or designated beneficiary of the deceased member under and pursuant to the provisions of Section 3.28.1500 in the circumstances specified in said Section 3.28.1500.

However, the surviving spouse or surviving domestic partner or, if there is no surviving spouse or surviving domestic partner, all of the surviving children, may elect before any allowance is paid to any person under the foregoing provisions of this section, to have the death benefit specified in Section 3.28.1500 paid to whomsoever may become entitled to it under the provisions of Section 3.28.1500, in lieu of having any benefits paid under or pursuant to the foregoing provisions of this section; and, in such event, no benefits whatsoever shall be paid or be payable to any person under the provisions of this section but said death benefit shall thereupon become payable under the provisions of Section 3.28.1500 to whomsoever may be entitled to the same under Section 3.28.1500. Any election made pursuant to the provisions of this subsection shall be in writing and must be filed with the retirement board before any allowance or benefit is paid to any person under this Section 3.28.1490.

(Prior code § 2904.1508; Ord. 27521.)

### **3.28.1500 Death benefit - Description and conditions.**

A. If, upon death before retirement of a member, no person is or becomes entitled to any benefits under any of the foregoing provisions of this Part 11, there shall be paid to the deceased member's estate, or to a beneficiary named by him if he elects to have such beneficiary receive such benefit in lieu of having it go to his estate, a death benefit equal to the amount of all of the deceased member's accumulated contributions in this system plus the following: One-twelfth of the annual compensation earned (or compensation earnable, if such is greater) by the deceased member during the twelve months immediately preceding his death times the number of years of federated city service to which such deceased member was entitled to credit as of the date of his death; provided and excepting, however, that the amount payable under this paragraph shall not exceed one-half of the compensation earned (or compensation earnable, if such is greater) by the deceased member in said twelve-month period.

B. A member may at any time designate, by a writing filed with the board, a beneficiary to receive such benefits as may be payable to his beneficiary or estate under this section.

C. Except as hereinafter otherwise provided, the designation of beneficiary may be by class, subject to such conditions as may be imposed by board rule, in which such members of the class as are in being at the time of the member's death shall be the beneficiary.

D. The right of any person designated as a beneficiary by a member to any benefits hereunder shall also be subject to the board's conclusive determination, upon evidence satisfactory to it of the existence, identity or other facts relating to entitlement of such person so designated as beneficiary, and payment made by the system in reliance on any such determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of the system from further liability for the benefit.

E. The designation of a beneficiary under this section may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.

F. The designation of the beneficiary by a member is not affected by termination of nor a break in his membership.

(Prior code § 2904.1509.)

### **3.28.1510 Death benefit - Election for payment in installments.**

An election may be made to have the death benefit specified in Section 3.28.1500 paid in installments as follows:

A. A member may elect by a writing filed with the board to have all or part of the death benefit paid in monthly (or biweekly, if the city elects to pay in biweekly installments) installments, fixed in number or amount and not involving life contingency, subject to such rules as the board may adopt. Regular interest shall be credited on the unpaid balance of benefits payable.

B. If a member dies without having made an election under subsection A. of this section, his beneficiary, after the death of the member and prior to the payment to him of the death benefit, or any part thereof, may elect by writing filed with the board to have the death benefit paid to him in the manner provided in subsection A. of this section.

C. When an election has been made to have the death benefit paid in accordance with subsection A. of this section, the first of such installments shall be paid on the first day of the month of two-week period next following the date when the death benefit would otherwise be payable, and one of such installments shall be paid on the first day of each month or two-week period thereafter. Such monthly or biweekly installment shall be the actuarial equivalent of the portion of the death benefit to be paid in installments on the date that such death benefit would otherwise be payable.

(Prior code § 2904.1510.)

### **3.28.1520 Surviving child's or children's allowances - How paid.**

A. Except as otherwise provided in this chapter, any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children shall be paid to such parent or parents of such child or children as have custody of such child or children, for the benefit of such child or children, or if a guardian or guardians have been appointed for such child or children, and the board shall have received notice thereof, to the guardian or guardians of such child or children, for the benefit of such child or children.

B. Notwithstanding the above, however, the board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be for the best interest of the children. In addition, the board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance, satisfactory to the board, that such payments will be used for the benefit of the children entitled thereto. No person shall have any claim against the board or any member thereof because of or by reason of the board's suspension of any payments or by reason of the board's changing the person or persons to whom such payments are made.

(Prior code § 2904.1511; Ord. 22429.)

### **3.28.1525 Surviving children's allowances - Payment to custodian or trustee.**

A. A member of this system or any person who has retired from this system may designate, on a

beneficiary designation form approved by the board, that any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children of the member or retired person shall be paid to any of the following:

1. A named custodian for such child under the California Uniform Transfers to Minors Act.
2. A trustee of a trust created for the benefit of such child or children under such member's or retired person's will.
3. A trustee of an inter vivos trust created for the benefit of such child or children.

B. Payment to Custodian. Such survivorship allowance shall be paid to a custodian under the California Uniform Transfers to Minors Act named in a beneficiary designation form if all of the following conditions are met:

1. The board is provided with proof to the board's satisfaction that such person is in fact the custodian named in the beneficiary designation form.
2. The board is provided with written acknowledgement of receipt of payment as custodian, as provided by California Probate Code Section 3908, on such form as the board may provide, together with execution of such additional waivers, indemnification, or other documents as the board may require.

C. Payment to Trustee of Testamentary Trust. Such survivorship allowance shall be paid to a trustee named in a member's or retired person's will if all of the following conditions are met:

1. Such member's or retired person's beneficiary designation form specifically designates a trust created under such person's will as beneficiary.
2. Such member's or retired person's will contains provisions specifically creating such trust or trusts for the benefit of such member's or retired person's surviving child or children.
3. The trustee is named in such member's or retired person's will.
4. The board is provided with a filed, endorsed, and certified copy of a court order which determines the validity of such trust or trusts and orders the establishment of such trust or trusts.

D. Payment to Trustee of Inter Vivos Trust. Such survivorship allowance shall be paid to the trustee of an inter vivos trust if all of the following conditions are met:

1. Such trust is clearly identified to the board's satisfaction on such member's or retired person's beneficiary designation form on file with the board.
2. Such trust contains provisions specifically creating a trust or trusts for the benefit of such member's or retired person's surviving child or children.
3. The board is provided with a filed, endorsed, and certified copy of a court order pursuant to California Probate Code Section 1138.1 or similar statute authorizing and approving payment of such benefit to such trust.

E. Unless and until the conditions of either B., C., or D. of this Section 3.28.1525 are met, the payment of such survivorship allowance shall be made in accordance with Section 3.28.1520 of this chapter.

(Ord. 22429.)

### **3.28.1530 Posthumous children.**

For purposes of this part, a posthumously born child shall be deemed to be a surviving child in existence at the time of the member's death, but shall not be entitled to any allowance hereunder for any time prior to its actual birth.

(Prior code § 2904.1512.)

## **Part 12 DEATH AFTER RETIREMENT**

### **Sections:**

- 3.28.1550 Applicability of Part 12 provisions.
- 3.28.1560 Definitions.
- 3.28.1570 Eligibility for allowance.
- 3.28.1580 Allowance to surviving spouse if eligible under Section 3.28.1570.
- 3.28.1590 Allowance to surviving child or children, if eligible under Section 3.28.1570, where there is no surviving spouse or surviving domestic partner.
- 3.28.1600 Allowance to surviving child or children, if eligible under Section 3.28.1570, where surviving spouse or surviving domestic partner dies after receiving an allowance.
- 3.28.1610 Surviving child's or children's allowances - How paid.
- 3.28.1620 Special death benefit.
- 3.28.1630 Posthumous children.

### **3.28.1550 Applicability of Part 12 provisions.**

Except as may be otherwise specifically provided by other provisions of this Chapter 3.28, the provisions of this Part 12 shall apply only when a member of this system dies after he has been retired pursuant to the provisions of this system and while he is so retired.

(Prior code § 2904.1550.)

### **3.28.1560 Definitions.**

As used in this Part 12:

A. "Death after retirement" means death of a former member of this system after he or she has been retired under this system and while he or she is on such retirement.

B. "Surviving child" and "surviving children" mean such child or children of a deceased member that meet and satisfy all of the following conditions and requirements:

1. The child survives the member's death; and
2. The child is neither married nor a member of a registered domestic partnership at the time of the member's death; and
3. The child is under the age of eighteen years at the time of the member's death; and
4. If the child is an adopted child of the member, the adoption was completed pursuant to law prior to the member's death.

A child who has been married, but whose marriage has been dissolved by divorce or death, shall not be deemed to be a surviving child as said term is used in this Part 12. A child who has been a member of a registered domestic partnership, but whose partnership has been terminated through a proceeding for dissolution or by filing a notice of termination of domestic partnership or by death, shall not be deemed to be a surviving child as said term is used in this Part 12.

C. "Surviving spouse" means the person to whom a person retired under the provisions of this system was married both at the time of such retired person's retirement and at the time of such retired person's death who survives such retired person's death, and none other.

D. "Surviving domestic partner" means the person:

1. With whom a person retired under the provisions of this system had established a registered domestic partnership by filing a declaration of domestic partnership with the secretary of state pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2; and
2. Was in the domestic partnership with the retired person both at the time of such retired person's retirement and at the time of such retired person's death; and
3. Who survives the retired person's death.

(Prior code §§ 2904.1551 - 2904.1553; Ords. 23806, 27521.)

### **3.28.1570 Eligibility for allowance.**

The benefits hereinafter specified in Sections 3.28.1580, 3.28.1590 and 3.28.1600 of this part shall be payable to the person specified in said sections in each of the following situations, and none other:

- A. Upon the death after retirement of a former member who at the time of retirement was entitled to credit for five or more years of federated city service rendered after June 30, 1975, while he or she was a member of this system;
- B. Upon the death after retirement of a former member who was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and who, in addition, had five hundred dollars or more of accumulated contributions in the retirement fund at the time of retirement under this system;
- C. Upon the death after retirement of a former member who became a member of this system pursuant to a transfer of communication functions from the county of Santa Clara to the City of San José and who was granted a retirement pursuant to Section 3.28.1110A.3. of this chapter.

(Prior code § 2904.1554; Ords. 21371, 22314, 23485.)



**3.28.1580 Allowance to surviving spouse if eligible under Section 3.28.1570.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, the surviving spouse or the surviving domestic partner, if any, of such deceased person shall thereafter be entitled to receive and shall be paid from the retirement fund, until the surviving spouse's or surviving domestic partner's death, an annual allowance equal to fifty percent of the amount of retirement allowance to which said deceased former member was theretofore entitled to receive under this system.

(Prior code § 2904.1555; 27521.)

**3.28.1590 Allowance to surviving child or children, if eligible under Section 3.28.1570, where there is no surviving spouse or surviving domestic partner.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, if at the time of such former member's death after retirement there is no surviving spouse and no surviving domestic partner, but there is or are a surviving child or surviving children, the following allowances shall be paid to such surviving child or children:

A. If there is only one eligible surviving child, such child shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the allowance to which a surviving spouse or surviving domestic partner would have been entitled under the provisions of Section 3.28.1570 if there had been a surviving spouse or surviving domestic partner.

B. If there are two or more surviving children, each eligible surviving child thereafter in existence shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the allowance which would have been payable to a surviving spouse or surviving domestic partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:

1. The annual allowance payable to any surviving child under this subsection B. shall never exceed twenty-five percent of the annual allowance which would have been payable to a surviving spouse or surviving domestic partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner, and;

2. The total allowances payable to all surviving children under this subsection B. shall never exceed seventy-five percent of the annual allowance which would have been payable to a surviving spouse or surviving domestic partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner.

(Prior code § 2904.1556; Ord. 27521.)

**3.28.1600 Allowance to surviving child or children, if eligible under Section 3.28.1570, where surviving spouse or surviving domestic partner dies after receiving an allowance.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, if at the time of such former member's death after retirement there is a surviving spouse or surviving domestic partner but he or she subsequently dies, any eligible surviving child or children

existing at the time of the surviving spouse's or surviving domestic partner's death and surviving thereafter shall be entitled, upon cessation of the surviving spouse's or surviving domestic partner's allowance, to receive the following:

A. If only one eligible surviving child exists after the death of the surviving spouse or surviving domestic partner and cessation of his or her allowance, such child shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance to which the surviving spouse or surviving domestic partner was theretofore entitled under Section 3.28.1580.

B. If two or more eligible surviving children exist after the death of the surviving spouse or surviving domestic partner and cessation of his or her allowance, each surviving child thereafter in existence shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which the surviving spouse or surviving domestic partner theretofore was entitled to receive under Section 3.28.1570, which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:

1. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance theretofore paid to the surviving spouse or surviving domestic partner under Section 3.28.1580, and;

2. The total annual allowance paid to all surviving children shall never exceed seventy-five percent of the annual allowance theretofore paid to the surviving spouse or surviving domestic partner under Section 3.28.1570.

(Prior code § 2904.1557; Ord. 27521.)

### **3.28.1610 Surviving child's or children's allowances - How paid.**

Except as otherwise provided herein, any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children shall be paid to such parent or parents of such child or children as have custody of such child or children for the benefit of such child or children; or, if a guardian or guardians have been appointed for such child or children and the board shall have received notice thereof, to the guardian or guardians of such child or children for the benefit of such child or children. Notwithstanding the above, however, the board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be for the best interests of the children. In addition, the board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance, satisfactory to the board, that such payments will be used for the benefit of the children entitled thereto. No person shall have any claim against the board or any member thereof because of or by reason of the board's changing the person or persons to whom such payments are made.

(Prior code § 2904.1559.)

### **3.28.1620 Special death benefit.**

Subject to other provisions of this Chapter 3.28, upon the death after retirement of a former member of this system, there shall be paid to his estate, or to such beneficiary as he may designate by

written designation filed with the retirement board, the sum of five hundred dollars. This benefit is additional to such other benefits as may be provided by other provisions of this system.

(Prior code § 2904.1560.)

### **3.28.1630 Posthumous children.**

For purposes of this Part 12, a posthumously born child shall be deemed to be a surviving child in existence at the time of said former member's death, but shall not be entitled to any allowance hereunder for any time prior to its actual birth.

(Prior code § 2904.1561.)

## **Part 13 OPTIONAL SETTLEMENTS**

### **Sections:**

- 3.28.1650 Election to change retirement allowance.
- 3.28.1660 Manner and time of election.
- 3.28.1670 Optional settlement one.
- 3.28.1680 Optional settlement two.
- 3.28.1690 Optional settlement three.
- 3.28.1700 Existence of surviving spouse, surviving domestic partner, or surviving child or children at time of member's or retiree's death.
- 3.28.1710 Designation of beneficiaries.
- 3.28.1720 Actuarial equivalences.

### **3.28.1650 Election to change retirement allowance.**

Subject to the provisions of this chapter, and subject particularly to the provisions of Section 3.28.1700 of this part, a person who is a member of this system or who has retired under this system may elect, in the manner and within the time specified in Section 3.28.1660, to have the actuarial equivalent of any retirement allowance to which such person may become or has become entitled under this system applied in accordance with any one of the optional settlements specified in this part as follows:

- A. To a lesser retirement allowance for himself or herself during such person's life; and
- B. To an allowance to a beneficiary, named by such person, to be paid after such person's death.

(Prior code § 2904.1600; Ord. 23736.)

### **3.28.1660 Manner and time of election.**

A. No election made or attempted to be made by any person pursuant to the provisions of this part shall be deemed valid unless the election is in writing and is filed with the retirement board or its secretary on or before, but no later than, the thirtieth day from and after the effective date of such person's retirement.

B. Any election made pursuant to the provisions of this part may be amended or revoked by the person who made it, provided such amendment or revocation is in writing and is filed with the retirement board or its secretary on or before, but no later than, the thirtieth day from and after the effective date of such person's retirement. If an election has been revoked, a new one may be made in the manner and time specified in subsection A. of this section.

C. Any election made pursuant to the provisions of this part that is not amended or revoked on or before the thirtieth day from and after the effective date of such person's retirement shall be irrevocable and benefits shall be paid in accordance with such election subject only to the provisions of this chapter.

(Prior code § 2904.1601; Ord. 23736.)

### **3.28.1670 Optional settlement one.**

Optional settlement one consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700, to have one hundred percent of the retiree's modified retirement allowance paid to the retiree's designated beneficiary for the life of the beneficiary.

(Prior code § 2904.1602; Ord. 23736.)

### **3.28.1680 Optional settlement two.**

Optional settlement two consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700, to have one-half of the retiree's modified retirement allowance paid to the retiree's designated beneficiary for the life of the beneficiary.

(Prior code § 2904.1603; Ord. 23736.)

### **3.28.1690 Optional settlement three.**

A. Optional settlement three consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700 and subsection B of this section, to have such percentage of the modified retirement allowance as the retiree may select, subject to approval of the retirement board, paid to the retiree's designated beneficiary for the life of the beneficiary.

B. In no case shall the actuarial equivalent of benefits payable to a beneficiary under this optional settlement three exceed the actuarial equivalent of the benefits payable to the same beneficiary if optional settlement one had been selected.

C. If at the time an election for an optional settlement may be made pursuant to Section 3.28.1660 there exists a spouse, domestic partner registered under Division 2.5 of the California Family Code or child of the person making the election who would be entitled to benefits under Part 11 or 12 of this chapter upon the death of said person, then this optional settlement three shall not be available to said person and no election of this optional settlement three shall become effective.

(Prior code § 2904.1604; Ords. 23736, 27521.)

**3.28.1700 Existence of surviving spouse, surviving domestic partner, or surviving child or children at time of member's or retiree's death.**

A. If a member or retiree has elected an optional settlement as set forth in Section 3.28.1670, 3.28.1680 or 3.28.1690 and has named a person other than the member's or retiree's surviving spouse or surviving domestic partner, and at the time of the member's or retiree's death there exists a surviving spouse, a surviving domestic partner or surviving child or children, then:

1. No benefits shall be paid to the designated beneficiary under the elected optional settlement; and
2. The benefits provided under Part 11, 12 or 14 of this chapter, whichever is applicable, shall be paid to such surviving spouse, surviving domestic partner or surviving child or children.

B. If at the time of the member's or retiree's death a beneficiary other than the member's or retiree's surviving spouse or surviving domestic partner should become entitled to any benefit under any optional settlement specified in Section 3.28.1670, 3.28.1680 or 3.28.1690, such benefit shall cease and terminate if and when a child or children of the member or retiree, born after the member's or retiree's death, becomes entitled to any benefits under the provisions of Part 11 or 12 of this chapter.

C. Special Provisions for Optional Settlements. If a member or retiree has elected an optional settlement as set forth in Section 3.28.1670 or Section 3.28.1680, and has named the member's or retiree's surviving spouse or surviving domestic partner as the designated beneficiary, then upon the member's or retiree's death:

1. The benefits payable to the designated beneficiary under such optional settlement shall be paid to such surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. Upon the death of such surviving spouse or surviving domestic partner, the benefits payable under such optional settlement shall cease. If any surviving child or children exist at the time of the surviving spouse's or surviving domestic partner's death, such child or children shall be paid a surviving child's or surviving children's allowance under the provisions of Part 11, 12 or 14 of this chapter, whichever is applicable, as though no optional settlement had been elected.

2. If at the retiree's death there is no surviving spouse and no surviving domestic partner but there is or are a surviving child or children, then the benefit that would have been paid to the surviving spouse or surviving domestic partner under subsection C.1. above shall not be paid and a surviving child's or surviving children's allowance shall be paid under the provisions of Part 11, 12 or 14 of this chapter, whichever is applicable, as though no optional settlement had been elected.

D. For the purposes of this part:

1. "Surviving spouse" means the person defined as a surviving spouse in Section 3.28.1460 or Section 3.28.1560, whichever section is applicable under the circumstances.

2. "Surviving domestic partner" means the person defined as a surviving domestic partner in Section 3.28.1460 or Section 3.28.1560, whichever section is applicable under the circumstances.

3. "Surviving child" and "surviving children" mean the person or persons defined as a surviving child or surviving children in Section 3.28.1460, Section 3.28.1560 or Section 3.28.1750, whichever section is applicable under the circumstances.

4. A posthumously born child shall be deemed to be a surviving child in existence at the time of the member's or retiree's death, and shall be entitled to benefits under this part as provided for other surviving children.

(Prior code § 2904.1605; Ords. 23736, 27521.)

### **3.28.1710 Designation of beneficiaries.**

A. The person electing any of the optional settlements specified in Section 3.28.1670, 3.28.1680 and 3.28.1690 shall designate in writing the beneficiary who shall be entitled to receive benefits under such optional settlement. The beneficiary so designated must be a natural person; it cannot be a corporation, nor can it be a class of natural or other persons.

B. If the person electing any of the optional settlements specified in Section 3.28.1670 and 3.28.1680 is married at the time of such election, is a domestic partner in a domestic partnership registered pursuant to Division 2.5 of the California Family Code or in a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2, is retired at the time of such election and is married to the spouse to whom the person was married at the time of such person's retirement or is retired at the time of such election and is a partner in a domestic partnership that was registered pursuant to Division 2.5 of the California Family Code or in a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of such person's retirement, then the person must designate his or her spouse as the beneficiary entitled to receive benefits under the optional settlement. Under these circumstances, no person other than said spouse or domestic partner shall be eligible to be a designated beneficiary and no election naming any other person as a designated beneficiary shall become effective.

C. No person shall be entitled to any benefit as a named beneficiary in any of said optional settlements unless he or she first satisfies the retirement board, and the board determines, that he or she is in fact the beneficiary designated to receive the benefit and is otherwise entitled to receive the benefit. Any such benefit being paid to any such beneficiary, or claimed beneficiary, is subject to termination or modification at any time by the retirement board if the board should subsequently find that such person was not entitled to or is no longer entitled to such benefit or any part thereof. Any payment of any benefit made in good faith from this system in reliance upon any abovementioned determination of the board shall constitute a complete discharge of this system's obligation respecting such benefit, to the extent of such payment, notwithstanding that it may not have discovered a beneficiary otherwise entitled to such benefit.

(Prior code § 2904.1616; Ords. 23736, 27521.)

### **3.28.1720 Actuarial equivalences.**

For the purposes of this part, actuarial equivalences shall be based on a nine (9) percent interest rate and the 1983 Group Annuity Table for Males with a two-year setback, or the interest rate and annuity tables adopted by resolution of the board upon the advice of the board's actuary provided that such interest rate and annuity tables comport with reasonable standards applicable to governmental retirement plans.

(Ord. 23736; Ord. 27838.)

## **Part 14 SURVIVING CHILD'S SCHOOL ALLOWANCE**

### **EXHIBIT B**

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Sections:

- 3.28.1750 Definitions.
- 3.28.1760 Rules and regulations - Administrative determinations.
- 3.28.1770 When deemed full-time student during period of nonattendance.
- 3.28.1790 Duration of entitlement.
- 3.28.1800 Child's school allowance - Amount and conditions.

**3.28.1750 Definitions.**

As used in this Part 14:

A. "Educational institution" is a school (including a technical, trade or vocational school), a junior college, college or university, which meets any of the conditions described in the following subsections of this section:

1. It is operated or directly supported by the United States, or by any state of the United States, or by any local government or political subdivision thereof; or

2. It is approved by a state or accredited by a state-recognized or nationally recognized accrediting agency or body. A nationally recognized accrediting agency or body is an agency or body that has been determined to be such by the United States Commissioner of Education. A state-recognized accrediting agency or body is an agency or body designated or recognized by a state as a proper authority for accrediting schools, colleges or universities as meeting educational standards. Approval by a state includes approval of a school, college or university as an educational institution, or of one or more of the school's, college's or university's courses by a state agency or subdivision of the state. This approval may be indirect, as for example, if attendance at the school satisfies the state's compulsory education laws, or if the school has tax exemption as a school, or if the school receives financial aid, loans or scholarship allowances; or

3. In the case of a non-accredited school, college or university, its credits are accepted, on transfer, by not less than three institutions which have been accredited by a state-recognized or nationally recognized accrediting agency or body, for credit on the same basis as if transferred from an institution so accredited. Acceptance of credits on transfer includes, in addition to acceptance of laterally transferred credits between similar institutions, acceptance of credits completed in an institution at a lower grade level for entrance into an institution at a higher grade level.

B. "Eligible surviving child" means a surviving child as defined in subsection E of this section, who meets and satisfies all of the following conditions:

- 1. Such surviving child must have attained the age of eighteen years; and
- 2. Such surviving child must not have attained the age of twenty-two years; and
- 3. Such surviving child must be neither married nor a member of a registered domestic partnership; and

4. Such surviving child must be a "full-time student" as such term is defined in subsection D of this section.

C. "Full-Time Attendance" Defined. Ordinarily, a student is in "full-time attendance" at an educational institution if he or she is enrolled in a noncorrespondence course and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. However, a student will not be considered in "full-time attendance":

1. If he or she is enrolled in a junior college, college or university in a course of study of less than thirteen school weeks' duration; or

2. If he or she is enrolled in any other educational institution and either the course of study is less than thirteen school weeks' duration or his or her scheduled attendance is at the rate of less than twenty hours a week. A student whose full-time attendance begins or ends in a month is in full-time attendance for that month.

D. "Full-time student" means a student who is in "full-time attendance," as such term is defined in subsection C of this section, as a student at an "educational institution," as such term is defined in subsection A of this section, except that no student shall be deemed to be a full-time student if he or she is paid by his or her employer for attending an educational institution at the employer's request or pursuant to a requirement of the employer.

E. "Surviving child" means a child who, if he or she were under the age of eighteen years, would be deemed to be a "surviving child" as such term is defined in Parts 11 and 12 of this chapter, and as such would be entitled, if he or she were under eighteen years of age, to a surviving child's allowance under and pursuant to the provisions of Parts 11 or 12 of this chapter. "Surviving child" does not include any child who, even if he or she were under eighteen years of age, would not be entitled to a surviving child's allowance under Parts 11 or 12 because of the existence of a "surviving spouse" or "surviving domestic partner" entitled to an allowance under Parts 11 or 12 or for any other reason, although such child might subsequently become a "surviving child," as defined in this section, if and when the surviving spouse or the surviving domestic partner no longer is entitled to an allowance under Parts 11 or 12 of this chapter.

(Prior code §§ 2904.1650 - 2904.1654, 2904.1657; Ords. 23806, 27521.)

### **3.28.1760 Rules and regulations - Administrative determinations.**

The retirement board is hereby authorized and empowered to adopt, administer and enforce all such rules and regulations, not inconsistent with the provisions of this part, as it may deem reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part. In addition, retirement board is hereby authorized and empowered to make inquiries and investigations, hold hearings, and make administrative or factual findings and determinations where it finds such to be reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part. Any and all such findings and determinations of said retirement board shall be deemed final and conclusive.

(Prior code § 2904.1660.)

### **3.28.1770 When deemed full-time student during period of nonattendance.**

A. An individual will be deemed a full-time student during any period of nonattendance (including part-time attendance) at an educational institution if the period is four consecutive calendar months or less, and the individual:



1. Establishes that he or she intends to be in full-time attendance at an educational institution in the month immediately following such period; or

2. Is in full-time attendance at an educational institution in the month immediately following such period.

B. However, an individual will not be deemed a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension notwithstanding such individual intends to, or does in fact, resume full-time attendance within four calendar months after the beginning of such period of nonattendance.

(Prior code § 2904.1655.)

### **3.28.1790 Duration of entitlement.**

An eligible surviving child is entitled to a surviving child's school allowance under the provisions of this part for each calendar month, after July 1, 1975, in which all the conditions of entitlement described in the preceding provisions of this part are met. The last month for which such child is entitled to a surviving child's school allowance under the provisions of this part is the month before the month in which any of the following events first occurs:

- A. The child dies; or
- B. The child marries; or
- C. The child becomes a member of a registered domestic partnership; or
- D. The child attains the age of twenty-two years; or
- E. The first month during no part of which the child is a full-time student.

(Prior code § 2904.1658; Ord. 27521.)

### **3.28.1800 Child's school allowance - Amount and conditions.**

An eligible surviving child shall be entitled to receive, for each calendar month (or for each two-week period, if the city elects to pay allowances biweekly) after July 1, 1975, in which all of the conditions of entitlement described in the provisions of this Part 14 are met by him or her, and in no event for any period longer than the duration of his or her entitlement, a child's school allowance. The amount of such allowance for each calendar month (or two-week period, if allowances are paid biweekly) for which said child is eligible for the same shall be the same as the amount, if any, which would be payable to him or her for each such month (or two-week period, if allowances are paid biweekly) as a surviving child's allowance under and by virtue of the provisions of Parts 11 or 12 and other relevant provisions of this Chapter 3.28 if he or she were under the age of eighteen years. Anything in said Parts 11 or 12 or elsewhere in this chapter to the contrary notwithstanding, for the purpose of determining and computing the amount of the child's allowance which would be payable to such child under the provisions of Parts 11 or 12 if he or she were under the age of eighteen years, and also for the purpose of determining and computing the amount of the child's allowance payable under the provisions of Parts 11 or 12 to other surviving children of the parent because of whose death said child is entitled to a school allowance, the eligible surviving child claiming the school allowance shall be deemed and considered to be one of the surviving children entitled to a child's allowance under the provisions of Parts 11 or 12.

(Prior code § 2904.1659.)

**Part 15**  
**OPTIONAL MEMBERSHIP FOR CERTAIN MEMBERS OF Chapter 3.32 POLICE AND**  
**FIRE DEPARTMENT RETIREMENT PLAN**

**Sections:**

- 3.28.1850    Applicability of Part 15 provisions.
- 3.28.1860    Option for membership - Conditions.
- 3.28.1870    Effective membership date.
- 3.28.1880    Nature of membership.
- 3.28.1890    Credit for service.
- 3.28.1900    City's contributions.
- 3.28.1910    Contributions - Cost of living adjustments.
- 3.28.1920    Contributions - Failure to pay terminates membership.
- 3.28.1930    Persons retired for disability and returning to active duty after effective date.

**3.28.1850    Applicability of Part 15 provisions.**

The provisions of this Part 15 shall be applicable only on and after the effective date of this Part 15, and shall then apply only to those persons who, in accordance with this part, are given and exercise an option for membership in the 1975 federated employee's retirement plan established by Chapter 3.28 of this Code.

(Prior code § 2904.1770; Ord. 18793.)

**3.28.1860    Option for membership - Conditions.**

A.    Subject to the conditions, limitations, restrictions and requirements hereinafter set forth in this Part 15, any person who, upon the effective date of the ordinance adopting this Part 15:

1.    Is a member of the police and fire department retirement system created by Ordinance 3254, adopted October 21, 1946, as continued under Chapter 3.32 of the San José Municipal Code established by Ordinance 3732; and also
2.    Is employed by the city in the following position: Typist, shall have and is hereby given an option of being governed by the provisions of this Part 15 and of being entitled to such rights and benefits as are provided for in this Part 15, subject to the conditions, restrictions and requirements mentioned herein and in this Chapter 3.28, in lieu of being governed by the provisions of Chapters 3.32 and 3.36 of this Code and in lieu of being entitled to any of the rights or benefits provided in such Chapters 3.32 and 3.36. Such option is not given to any person who, on the effective date of this Part 15, is on service or disability retirement under and pursuant to Chapters 3.32 and 3.36 of this title, except as provided in Section 3.28.1930.

B.    No such person to whom such option is hereinabove given shall be governed by the provisions

of this Part 15, nor be entitled to any of the rights or benefits provided for in this Part 15, unless such person exercises the option herein granted, in the manner and within the time specified in this section, and no later.

C. Each such person who exercises said option within the time and in the manner specified in this section shall, on and after the exercise of such option, be governed by the provisions of this Part 15 and be entitled to the rights and benefits provided for in this part, subject to the above-mentioned conditions, limitations, restrictions and requirements, in lieu of being governed by any other chapter of this title and in lieu of being entitled to any other rights or benefits provided by other provisions of this Chapter 3.28.

D. Each person given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement, on a form furnished by said secretary on request, declaring:

1. That such person elects to exercise said option and become a member of the Chapter 3.28 system subject to the provisions of this Part 15; and

2. That he elects to receive credit under this system for service for which he was entitled to credit under the Chapter 3.32 police and fire department system of which he is then a member; and

3. That he agrees to pay into the retirement fund established by this chapter, in the manner and not later than the times specified in this section, an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system (including interest thereon at the regular rate then prevailing under the federated system) equal to the amount such accumulated contributions would be if he had been a member of the city's federated city employees systems and federated employees retirement plan in the position to which he had been appointed and because of which he exercises the option to be a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to receive credit, and if the contributions payable to the applicable federated system and plans under such circumstances had been deducted from his compensation and paid into the applicable retirement funds pursuant to such applicable systems and plans during all of such times; and

4. That, for the purpose of such payment, such person consents to and authorizes the transfer and payment into the retirement fund established by this chapter, from the retirement fund established under the police and fire department retirement plan for the system of which he is then a member, all accumulated contributions credited to his individual account; and

5. That, for the purpose of paying any balance remaining after crediting the amount determined under paragraph 4. above, such person agrees to pay such balance as follows: within thirty days after filing such declaration and election, or in not more than thirty-six equal monthly installments, or seventy-two equal biweekly installments with interest thereon at the regular rate then currently prevailing under this system, the first payment commencing not more than thirty days after such filing; and

6. That, in the event any benefit becomes due and payable under this system to any person before full payment is made into the retirement fund of the total amount of such accumulated contributions, plus interest, as are required under paragraphs 3. and 5. above, such person consents to and authorizes deduction of the balance of such unpaid contributions from such benefits.

E. No such written declaration and notice of exercise of such option shall be effective for any purpose whatsoever unless it shall have been filed with the secretary of the retirement board on or before, but not later than the thirtieth day immediately following the date on which such secretary has caused to be deposited in the United States Mail, a notice of the right to exercise such option,

addressed to such person at his last place of residence as shown on city's records. Forthwith after the effective date of this part, the secretary of the retirement board shall give notice of such right and option.

(Prior code § 2904.1771; Ord. 18793.)

### **3.28.1870 Effective membership date.**

Upon filing the written declaration and exercise of option described in Section 3.28.1860 with the secretary in the manner and within the time specified in Section 3.28.1860, the person making such election shall be deemed to have exercised the option granted under this Part 15; and on the day immediately succeeding the date of such filing, he shall cease to be a member of the police and fire department retirement system created under Chapter 3.32 and shall thereupon be a member of the Chapter 3.28 system subject to the provisions of this Part 15. Upon the effective date of such membership in this Chapter 3.28 system, the person making such election and all other persons who, by reason of such person's membership in the Chapter 3.32 system, may have any right or interest in any retirement system in Title 3 of this Code other than as provided in this Part 15, shall cease to have any entitlement to any right, benefit, allowance or moneys thereunder, except as may be specifically provided in Section 3.28.1880.

(Prior code § 2904.1772; Ord. 18793.)

### **3.28.1880 Nature of membership.**

A. A person who has exercised in the time and manner provided in this Part 15 the option granted herein shall be entitled to all rights and benefits of membership in the Chapter 3.28 system which are provided in this section, and is in this part referred to as a "Part 15 member."

B. Upon the effective date of such option, the Part 15 member who exercises such option shall be deemed to be in and thereafter to be rendering "federated city service" within the definition of Section 3.28.030.10 of this chapter.

C. A Part 15 member shall be deemed, solely for the purpose of this part, to determine qualification and the extent of rights and benefits, to be "a person who was a member of the Chapter 3.24 system who became a member of the Chapter 3.28 retirement system pursuant to the provisions of Section 3.28.400" of Part 4 of Chapter 3.28, and shall have all the rights, duties, benefits and privileges applicable to such persons by reason of Chapter 3.28 of Title 3 of this Code. Whenever the clause so enquoted above or words of similar import are used in Chapter 3.28, such clause shall for the purpose of this Part 15 mean, include and refer to such Part 15 member.

D. For the purpose of this Part 15, and for the sole purpose of according to a Part 15 member the rights and benefits granted in Sections 3.28.1160 and 3.28.1320 to former members of this Chapter 3.24 retirement system who became members pursuant to Section 3.28.400, such Part 15 member shall be deemed to have rendered federated city service for which he was entitled credit as a member of the Chapter 3.24 retirement system to the extent that, during such time, such service was rendered as a member of the police and fire department retirement system, and such Part 15 member shall be deemed to have been a member of the Chapter 3.24 system during such service period, for the purpose of qualifying for service and disability retirement and the optional settlement provisions therein mentioned, and the amount of such benefits and allowances therein mentioned.

(Prior code § 2904.1773; Ord. 18793.)

### **3.28.1890 Credit for service.**

Notwithstanding any provision of Sections 3.28.610 and 3.28.620 to the contrary, a Part 15 member shall be entitled to credit in this system, as "federated city service," for all service rendered by such Part 15 member for which he had been entitled to credit to determine benefits under the Chapter 3.32 police and fire department retirement system of which he was formerly a member.

(Prior code § 2904.1774; Ord. 18793.)

### **3.28.1900 City's contributions.**

If a person pursuant to Section 3.28.1850 elects to and becomes entitled to receive credit under this system for service formerly credited to him under the police and fire department retirement plan, the city shall contribute to the retirement fund created under this chapter an amount equal to the contributions which the city would have been required to make to the retirement funds federated systems and plans concurrently with the contributions required of the person making such election had such person been a member of such retirement systems and plans during the periods of city service instead of said Chapter 3.32 police and fire department retirement system; such contributions shall include interest on such contributions at the regular rate then prevailing under the applicable federated systems and plans. Contributions required to be made by the city pursuant to this section shall be made by the transfer and payment, into the retirement fund established by this chapter from the police and fire department fund, of all contributions made by the city into such police and fire department retirement fund for or because of such person's membership in the Chapter 3.32 police and fire department plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other available city funds.

(Prior code § 2904.1775; Ord. 18793.)

### **3.28.1910 Contributions - Cost of living adjustments.**

The contributions respectively required of a Part 15 member and the city under Sections 3.28.1860 and 3.28.1900 shall include such contributions, plus interest at the applicable prevailing rate, as are respectively required of such member and the city to provide the funding of cost of living increases and decreases under Chapter 3.44 of this title.

(Prior code § 2904.1776; Ord. 18793.)

### **3.28.1920 Contributions - Failure to pay terminates membership.**

A. A Part 15 member's failure to make any lump-sum or installment payment of contributions elected and required under Sections 3.28.1860 and 3.28.1910 within thirty days after any such payment is due shall terminate a Part 15 member's membership in the Chapter 3.28 system and all rights, benefits appertaining to such system, unless prior to such nonpayment any person has become entitled to any benefit under this system by reason of such Part 15 member shall thereupon be restored to membership in and shall be entitled only to all of the benefits of the Chapter 3.32 police and fire department system of which such person was formerly a member as if such member had continuously been and remained a member thereof, and not of the Chapter 3.28 system pursuant to this Part 15, further, upon such restoration to former membership, there shall be no further option to become a member of the Chapter 3.28 system pursuant to this Part 15.

B. Upon restoration of membership in such Chapter 3.32 system pursuant to this section, the affected member and the city shall each respectively make such contributions and transfer such funds to the Chapter 3.32 retirement fund of the system to which the member is restored, as have been credited to their respective accounts in this system's retirement fund to the extent necessary, as though the former Part 15 member's membership in such Chapter 3.32 system had remained continuous and

uninterrupted by any Part 15 membership in this system. The balance of any contributions required of the member and the city for such purposes shall be made available from any available source, including deductions from such member's further compensation where required.

(Prior code § 2907.1777; Ord. 18793.)

**3.28.1930 Persons retired for disability and returning to active duty after effective date.**

A. Each person who, within six months of the effective date of the ordinance adopting this Part 15, was:

1. A member of the police and fire department retirement system established by Chapter 3.32 of this title; and

2. Employed by the city in the position of typist; and

3. Entitled to or received a disability retirement from such position pursuant to such Chapter 3.32 prior to the effective date of this part shall have the option of becoming a Part 15 member, if such person's disability should cease and such person should be restored to active service pursuant to the retirement plan established by Chapter 3.32 of this Code in the position such person held at the time of retirement for disability.

B. Such option shall be exercised in the manner provided in Section 3.28.1860, as follows:

1. Not later than the thirtieth day immediately following the date on which the secretary of the retirement board has deposited in the United States Mail, after such restoration to active duty, a notice of the right to exercise such option; or

2. If earlier, not later than the ninetieth day immediately following the date of such restoration. Upon filing such statement in the manner and time hereinabove specified, such person shall be deemed to have become a Part 15 member in the same manner and to the same extent as provided in Section 3.28.1860. Anything elsewhere to the contrary notwithstanding, no such person shall become a member of the Chapter 3.28 plan unless the option herein given is exercised as specified in this Part 15.

(Prior code § 2904.1778; Ord. 18793.)

**Part 16**

**MEDICAL BENEFITS FOR CERTAIN RETIREES AND SURVIVORS**

**Sections:**

3.28.1950 Medical benefits for retired members.

3.28.1960 Medical benefits for survivors of members.

3.28.1970 Requirements for participation in medical insurance plan.

3.28.1980 Allocation of costs of providing medical insurance coverage to members or survivors.

3.28.1990 Eligible medical plan.

**3.28.1995**    Limitation on funding provided to retirement fund for medical benefits.

**3.28.1950**    **Medical benefits for retired members.**

Subject to the provisions of this chapter, a member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.28.1970 if the member satisfies the requirements of subsection A., subsection B., or subsection C.:

A.    The member is retired for service or disability under the provisions of this chapter and at the time of such retirement meets any of the following requirements:

1.    Is entitled to credit for fifteen or more years of service; or
2.    Receives an allowance equal to at least thirty-seven and one-half percent of the final compensation of such member; or
3.    Would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of such member if the workers' compensation offset set forth in Section 3.28.1040 did not apply.

B.    The member is entitled to credit for twelve or more years of service as of May 14, 1993; and the member is retired for service on or after May 14, 1993, but prior to June 20, 1993.

C.    The member voluntarily resigns from city service and satisfies all of the following requirements:

1.    The effective date of the voluntary resignation is on or after May 14, 1993, but prior to June 20, 1993; and
2.    As of the effective date of the resignation, the member is entitled to credit for at least twelve years of service; and
3.    The member elects to continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; and
4.    The member is not reinstated to city service prior to the member's retirement; and
5.    The member retires for service under the provisions of Section 3.28.1110.

(Ords. 21763, 22245, 24347.)

**3.28.1960**    **Medical benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving spouse, surviving domestic partner, child and/or children, as those terms are defined in Sections 3.28.1460, 3.28.1560, and 3.28.1750 of this chapter, whichever is applicable, is receiving a monthly survivorship allowance pursuant to Part 11, Part 12 or Part 14 of this chapter or is receiving an optional settlement allowance pursuant to Part 13 of this chapter because of the death of a member, then said surviving spouse, surviving domestic partner, child and/or children may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.28.1970 if the following conditions are satisfied:

A.    The member either died before receiving retirement pay or was retired either for service or disability; and

B. At the time of the member's death, the member:

1. Was entitled to credit for fifteen or more years of service; or
2. Was receiving an allowance equal to at least thirty-seven and one-half percent of such member's final compensation; or
3. Would have been receiving an allowance equal to at least thirty-seven and one-half percent of such member's final compensation if the workers' compensation offset set forth in Section 3.28.1010 did not apply; or
4. Was retired for service between May 14, 1993, and June 19, 1993, inclusive, and was entitled to credit for twelve or more years of service; or
5. Had voluntarily resigned from city service with an effective resignation date between May 14, 1993, and June 19, 1993, inclusive, had elected to remain a member of this system by allowing his or her accumulated contributions to remain in the retirement fund, and at the time of such resignation was entitled to credit for twelve or more years of service.

(Ords. 21763, 22245, 23736, 24347, 27521.)

**3.28.1970 Requirements for participation in medical insurance plan.**

A. A member, as specified in Section 3.28.1950, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the member satisfies the following requirements:

1. The member retires for service or disability pursuant to the provisions of this chapter; and
2. The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums.

B. A survivor, as specified in Section 3.28.1960, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the following conditions are satisfied:

1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment and was retired pursuant to the provisions of this chapter; and
2. At the time of the member's death, the member and the survivor were enrolled in one of the medical insurance plans sponsored by the city; and
3. The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums.

C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability.

D. A member may secure medical insurance coverage for a domestic partner only if the domestic partner and member had established a registered domestic partnership pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of said member's retirement for service or disability.

E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only,



except as follows:

1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if at least one surviving child as defined in Section 3.28.1460.D., or at least one child of the surviving spouse or surviving domestic partner who is unmarried, not a member of a registered domestic partnership and under the age of eighteen years, or an eligible surviving child for purposes of receiving a school allowance as defined in Section 3.28.1750, is surviving the death of a member; in such case, if such child was enrolled in a medical insurance plan sponsored by the city at the time of the member's death.

2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 14 of this Chapter.

F. As used in this section, "medical insurance plan sponsored by the city" means an eligible medical plan as described in Section 3.28.1990, below.

G. Notwithstanding the provisions of Sections 3.28.1970.A.1., 2., and 3., and 3.28.1970.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this part, but who, at the time of retirement or death, could not enroll because the benefits provided in this part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.28.1970 and with all other provisions of this part.

H. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who could not enroll because the family coverage provided in subsection E. above was not available to the surviving spouse at the time of the member's death, may enroll in family coverage in an eligible insurance plan as provided for in this part until December 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations set forth in this Section 3.28.1970 and with all other provisions of this part.

(Ords. 21763, 22807, 26642, 27521.)

### **3.28.1980 Allocation of costs of providing medical insurance coverage to members or survivors.**

A. The costs of premiums for medical insurance coverage in an eligible medical plan shall be paid from the medical benefits account established by Section 3.28.380 or from the trust fund established by Chapter 3.52 and by deductions from monthly allowances paid by the plan in accordance with this Section 3.28.1980. Unless otherwise determined by the trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the trust fund established by Chapter 3.52.

B. Except as provided in Subsection C:

1. The portion of the premium to be paid from the medical benefits account, or trust fund established by Chapter 3.52, shall be the portion that represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage, for which the member or survivor is

eligible and in which the member or survivor enrolls under the provisions of this part, which is available to an employee of the city at such time as said premium is due and owing.

2 Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid from the medical benefits account. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this chapter.

C. A surviving spouse or surviving domestic partner who is otherwise eligible only for single coverage, but who elects family coverage pursuant to Section 3.28.1970.D., shall be required to pay that portion of the medical premium which exceeds the sum of the amount payable by the surviving spouse or surviving domestic partner and the amount payable from the medical benefits account or the trust fund established by Chapter 3.52 for single coverage as provided in Subsection B. above. The portion of the premium required to be paid by the surviving spouse or surviving domestic partner shall be deducted from the monthly allowances otherwise payable to the surviving spouse or surviving domestic partner.

(Ords. 21763, 26642, 27521, 27838, 28914.)

### **3.28.1990 Eligible medical plan.**

For purposes of this Part 16, members or their survivors may secure medical insurance coverage only from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees.

(Ord. 21763.)

### **3.28.1995 Limitation on funding provided to retirement fund for medical benefits.**

A. It is intended that the funding provided to the retirement fund for medical benefits provided by this system meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Millas-Brown Act (California Government Code Section 3500 et seq.), the city reserves the right to amend this part to limit the funding provided to the retirement fund for the medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 16 and the dental benefits provided by Part 17, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, the allocation of costs set forth in Section 3.28.1980 shall be adjusted as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The board, in consultation with its actuary, shall determine the adjustment to be implemented until this part is amended pursuant to Subsection A. above.

(Ords. 27838, 28914.)

## **Part 17**

## **DENTAL BENEFITS FOR RETIRED MEMBERS AND SURVIVORS**

### **Sections:**

3.28.2000 Dental benefits for retired members.

- 3.28.2010 Dental benefits for survivors of members.
- 3.28.2020 Requirements for participation in dental insurance plan.
- 3.28.2030 Costs of dental insurance.
- 3.28.2040 Eligible dental plan.
- 3.28.2045 Limitation on funding for dental benefits.

**3.28.2000 Dental benefits for retired members.**

Subject to the provisions of this chapter, if a member of this system is retired for service or disability and at the time of such retirement is (i) entitled to credit for five or more years of service, or (ii) is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, or (iii) would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member if the workers' compensation offset set forth in Section 3.28.1040 did not apply, then said member may be entitled to dental insurance coverage in an eligible dental plan as specified in this part.

(Ord. 22261.)

**3.28.2010 Dental benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving spouse, surviving domestic partner, or surviving child and/or children, as those terms are defined in Sections 3.28.1460, 3.28.1560, and 3.28.1750 of this chapter, whichever is applicable, is receiving a monthly survivorship allowance pursuant to Part 11, Part 12 or Part 14 of this chapter or is receiving an optional settlement allowance pursuant to Part 13 of this chapter because of the death of a member of this system, then said surviving spouse, surviving domestic partner, or surviving child and/or children may be entitled to dental insurance coverage in an eligible dental plan as specified in this part if the following conditions are satisfied:

- A. The member either died before receiving retirement pay or was retired for either service or disability; and
- B. Such member was at the time of death:
  - 1. Entitled to credit for five or more years of service; or
  - 2. Was receiving an allowance equal to at least thirty-seven and one-half percent of final compensation; or
  - 3. Would have been receiving an allowance equal to at least thirty-seven and one-half percent of final compensation if the workers' compensation offset set forth in Section 3.28.1040 did not apply.

(Ords. 22261, 23736, 27521.)

**3.28.2020 Requirements for participation in dental insurance plan.**

- A. A member, as specified in Section 3.28.2000 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the member satisfies the following requirements:

1. The member terminates city employment pursuant to the retirement provisions of this chapter; and

2. At the time of his or her retirement, the member is enrolled in one of the dental insurance plans sponsored by the city.

B. A survivor of a member, as specified in Section 3.28.2010 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the survivor satisfies the following requirements:

1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment pursuant to the retirement provisions of this chapter; and

2. At the time of the member's death, the member and the survivor were enrolled in one of the dental insurance plans sponsored by the city.

C. Notwithstanding the provisions of subsections A. and B. of this section, all retired members and survivors of members who meet the qualifications set forth in Section 3.28.2000 or Section 3.28.2010 and who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this part.

(Ord. 22261.)

### **3.28.2030 Costs of dental insurance.**

The cost of providing dental insurance coverage as provided in this part shall be borne by and paid from the medical benefits account established by Section 3.28.380 or from the trust fund established by Chapter 3.52. Unless otherwise determined by the trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the trust fund established by Chapter 3.52.

(Ords. 22261, 27838, 28914.)

### **3.28.2040 Eligible dental plan.**

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.

(Ord. 22261.)

### **3.28.2045 Limitation on funding for dental benefits.**

A. It is intended that the funding provided to the retirement fund for dental benefits provided by this system meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Millas-Brown Act (California Government Code Section 3500 et seq.), the city reserves the right to amend this part to allocate costs of providing dental medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 17 and the medical benefits provided by Part 16, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the

applicable regulations, then Section 3.28.2030 notwithstanding, all or a portion of the costs set forth in Section 3.28.2030 may be allocated to the retiree, former member or survivor covered by the dental plan as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The board, in consultation with its actuary, shall determine the allocation to be implemented until this system is amended pursuant to Subsection A. above.

(Ords. 27838, 28914.)

## **Part 18**

### **1987 EARLY RETIREMENT INCENTIVE PROGRAM**

#### **Sections:**

- 3.28.2100 Establishment.
- 3.28.2110 Eligibility requirements.
- 3.28.2120 Benefits incentive.
- 3.28.2130 Payout of leave balances.
- 3.28.2140 Part 9 applicability.
- 3.28.2150 Additional costs borne by city.

#### **3.28.2100 Establishment.**

There is hereby established the 1987 Early Retirement Incentive Program for those members of this system who meet the eligibility requirements of Section 3.28.2110.

(Ord. 22573.)

#### **3.28.2110 Eligibility requirements.**

A member of this system who is performing federated city service on June 23, 1987, who continues to perform such service through October 3, 1987, and who meets all of the following eligibility requirements may participate in the early retirement incentive program established by this part and may be retired for service thereunder:

A. The member must, as of October 3, 1987, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B, subsections 1. through 6., of which not less than five years were rendered after the member became and while the member was a member of this system.

B. The member must, as of October 3, 1987, either:

1. Be at least fifty-two years of age; or
2. Be entitled to credit for at least twenty-seven years of federated city service.

C. The member must file his or her written application for retirement for service pursuant to this chapter during the period of time from June 23, 1987, to September 15, 1987, inclusive.

D. The member's retirement for service must become effective on October 4, 1987.

(Ord. 22573.)

### **3.28.2120 Benefits incentive.**

Any provision of this chapter to the contrary notwithstanding, for the purpose of determining the amount of the monthly retirement allowance under Section 3.28.1110.C., 3.28.1120.B., or 3.28.1130.B., a member who retires for service pursuant to Section 3.28.2110 shall be entitled to credit for federated city service, in addition to the federated city service credit described in Section 3.28.610.B, subsections 1 through 6 which was earned by such member as of the date of retirement, as follows:

A. A member who is at least fifty-five years of age and is entitled to credit for at least fifteen years of federated city service shall receive credit for one additional full year of federated city service.

B. Except as provided in subsection D., a member who is at least fifty-two years of age but less than fifty-five years of age and who is entitled to credit for at least fifteen years of federated city service shall receive credit for one additional full year of federated city service for each year between such member's age on the date of retirement and fifty-five years, calculated as follows:

Age	Additional Service Credit
At least 52, but less than 53	3 years
At least 53, but less than 54	2 years
At least 54, but less than 55	1 year

C. Except as provided in subsection D., a member who is entitled to credit for at least twenty-seven years but less than thirty years of federated city service and is less than fifty-five years of age shall receive one additional full year of federated city service credit for each year between the number of years of earned service credit on the date of retirement and thirty years, calculated as follows:

Age	Additional Service Credit
At least 27, but less than 28	3 years
At least 28, but less than 29	2 years
At least 29, but less than 30	1 year

D. A member who is at least fifty-two years of age but less than fifty-five years of age and who is entitled to credit for at least twenty-seven years but less than thirty years of federated city service shall receive credit for additional federated city service as described in subsection B. or C., whichever is less.

E. Any other provision herein notwithstanding, in no event shall the member's monthly retirement allowance exceed a maximum of seventy-five percent of the member's final compensation.

(Ord. 22573.)

**3.28.2130 Payout of leave balances.**

Whenever any member who retires pursuant to Section 3.28.2110 is entitled to payout for accumulated sick leave, vacation and/or compensatory time, such payout shall be in two equal installments. The first installment shall be payable upon retirement. The second installment shall be payable on August 1, 1988.

(Ord. 22573.)

**3.28.2140 Part 9 applicability.**

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 18 shall apply to all persons who retire pursuant to Section 3.28.2110.

(Ord. 22573.)

**3.28.2150 Additional costs borne by city.**

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part.

(Ord. 22573.)

**Part 19  
1992 EARLY RETIREMENT INCENTIVE PROGRAM**

Sections:

- 3.28.2200 Establishment.
- 3.28.2210 Eligibility requirements.
- 3.28.2220 Benefits incentive.
- 3.28.2230 Payout of leave balances.
- 3.28.2240 Part 9 applicability.
- 3.28.2250 Additional costs borne by city.

**3.28.2200 Establishment.**

There is hereby established the 1992 Early Retirement Incentive Program for those members of this system who meet the eligibility requirements of Section 3.28.2210.

(Ord. 24107.)

**3.28.2210 Eligibility requirements.**

A member of this system who meets all of the following eligibility requirements may participate in the

1992 Early Retirement Incentive Program established by this part and may be retired for service under such program:

A. The member must, as of July 5, 1992, be employed by the City of San José. A member who, on July 5, 1992, is on an unpaid leave of absence from federated city service and has a right to return to service pursuant to the city's leave of absence policies, shall be deemed to be employed by the city for the purposes of this subsection A.

B. The member must, as of the effective date of the member's retirement and no later than November 7, 1992, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B., paragraphs 1 through 6.

C. The member must, as of the effective date of the member's retirement and no later than November 7, 1992, either:

1. Be at least fifty-three years of age; or
2. Be entitled to credit for at least twenty-eight years of federated city service.

D. The member must file his or her written application for retirement pursuant to this part prior to September 15, 1992.

E. The member's retirement for service must become effective on or before November 7, 1992.

(Ord. 24107.)

### **3.28.2220 Benefits incentive.**

Any provision of this chapter to the contrary notwithstanding, for a member who retires pursuant to Section 3.28.2210 the amount of the monthly retirement allowance under Section 3.28.1110.B., Section 3.28.1120.B. or Section 3.28.1130.B., shall be calculated in accordance with this section.

A. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1 through 6, which was earned by such member as of the date of retirement, a member who is at least fifty-three years of age and is entitled to credit for at least fifteen years of federated city service shall receive additional service credit for the lesser of:

1. The number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years; or
2. Two full years.

B. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is entitled to credit for at least twenty-eight but less than thirty years of federated city service shall receive additional service credit for the number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years.

C. No member shall receive additional service credit under both subsections A. and B. If a member qualifies for additional service credit under both subsections A. and B., the member shall receive the additional service credit only under whichever subsection provides for the greater amount of additional service credit.

D. For a member who is entitled to credit for at least thirty years of federated city service, no



additional service credit shall be given. Instead, notwithstanding the provisions of Section 3.28.030.11, final compensation shall be defined to mean the highest compensation earned by such member during any consecutive twelve-month period of federated city service.

(Ord. 24107.)

### **3.28.2230 Payout of leave balances.**

Whenever any member who retires pursuant to Section 3.28.2210 is entitled to payout for accumulated sick leave and/or vacation, such payout shall be in two equal installments. The first installment shall be payable on January 8, 1993. The second installment shall be payable on January 7, 1994.

(Ord. 24107.)

### **3.28.2240 Part 9 applicability.**

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 19 shall apply to all persons who retire pursuant to Section 3.28.2210.

(Ord. 24107.)

### **3.28.2250 Additional costs borne by city.**

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part.

(Ord. 24107.)

## **Part 20**

### **1993 EARLY RETIREMENT INCENTIVE PROGRAM**

#### **Sections:**

- 3.28.2300 Establishment.
- 3.28.2310 Eligibility requirements.
- 3.28.2320 Benefits incentive.
- 3.28.2330 Part 9 applicability.
- 3.28.2340 Additional costs borne by city.

### **3.28.2300 Establishment.**

There is hereby established the 1993 Early Retirement Incentive Program for those members of this system who meet the eligibility requirements of Section 3.28.2310.

(Ord. 24346.)

### **3.28.2310 Eligibility requirements.**

A member of this system who meets all of the following eligibility requirements may participate in the 1993 Early Retirement Incentive Program established by this part and may be retired for service under such program:

A. The member must, as of May 14, 1993, be employed by the City of San José. A member who, on May 14, 1993, is on an unpaid leave of absence from federated city service and has a right to return to service pursuant to the city's leave of absence policies, shall be deemed to be employed by the city for the purposes of this subsection A.

B. The member must, as of the effective date of the member's retirement and no later than October 24, 1993, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B., paragraphs 1. through 6.

C. The member must, as of the effective date of the member's retirement, and no later than October 24, 1993, either:

1. Be at least fifty-three years of age; or
2. Be entitled to credit for at least twenty-eight years of federated city service.

D. The member must file his or her written application for retirement pursuant to this part prior to May 14, 1993.

E. The member's retirement for service must become effective on or before October 24, 1993.  
(Ord. 24346.)

### **3.28.2320 Benefits incentive.**

Any provision of this chapter to the contrary notwithstanding, for a member who retires pursuant to Section 3.28.2310, the amount of the monthly retirement allowance under Section 3.28.1110.B., Section 3.28.1120.B., or Section 3.28.1130.B., shall be calculated in accordance with this section.

A. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is at least fifty-three years of age and is entitled to credit for at least fifteen years of federated city service shall receive additional service credit for the lesser of:

1. The number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years; or
2. Two full years.

B. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is entitled to credit for at least twenty-eight but less than thirty years of federated city service shall receive additional service credit for the number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years.

C. No member shall receive additional service credit under both subsections A. and B. If a member qualifies for additional service credit under both subsections A. and B., the member shall receive the additional service credit only under whichever subsection provides for the greater amount

of additional service credit.

D. For a member who is entitled to credit for at least thirty years of federated city service, no additional service credit shall be given. Instead, notwithstanding the provisions of Section 3.28.030.11, final compensation shall be defined to mean the highest compensation earned by such member during any consecutive twelve-month period of federated city service.

(Ord. 24346.)

### **3.28.2330 Part 9 applicability.**

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 20 shall apply to all persons who retire pursuant to Section 3.28.2310.

(Ord. 24346.)

### **3.28.2340 Additional costs borne by city.**

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part.

(Ord. 24346.)

## **Part 21 RECIPROCITY**

### **Sections:**

- 3.28.2400 Purpose.
- 3.28.2410 Limitations on application of this part.
- 3.28.2420 Benefits.
- 3.28.2430 Special redeposit provisions.
- 3.28.2440 Information and data.
- 3.28.2450 Interpretation of this part.
- 3.28.2460 Modification of rights.
- 3.28.2470 Costs to be borne by city.

### **3.28.2400 Purpose.**

The purpose of this Part 21 is to extend to the members of other public agency retirement systems which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20042, 20043, 31840.2, or 45310.5 of the California Government Code or pursuant to the charter of a city or a city and county or pursuant to the authority vested in any other public agency of the state of

California (hereafter "reciprocal systems"), and which have entered into an agreement to establish a reciprocal retirement system with the California Public Employees' Retirement System, the rights in this retirement plan set forth in this Part 21.

(Ord. 24682.)

### **3.28.2410 Limitations on application of this part.**

A. Subject to Section 3.28.2460, the provisions of this Part 21 shall only apply to a person who satisfies the requirements of paragraph 1. or paragraph 2. of this subsection A.:

1. The person is a member of this retirement system, terminates his or her employment with the city, and:

a. In the case where such termination of employment occurs between July 1, 1975, and December 31, 1975, inclusive, becomes a member of a reciprocal system within ninety days of such termination of employment; or

b. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of a reciprocal system within six months of such termination of employment.

2. The person is a member of a reciprocal system, terminates his or her employment pursuant to which he or she was a member of such reciprocal system; and:

a. In the case where such termination of employment occurred prior to July 1, 1975, became a member of the Chapter 3.24 system within ninety days of such termination of employment and became a member of this retirement system pursuant to Section 3.28.400, 3.28.410, 3.28.420, 3.28.430, or 3.28.440; or

b. In the case where such termination of employment occurs between July 1, 1975, and December 31, 1975, inclusive, becomes a member of this retirement system within ninety days of such termination of employment; or

c. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of this retirement system within six months of such termination of employment.

B. Except as provided in subsection C. below, the provisions of this Part 21 shall apply only to a member whose termination and entry into employment resulting in a change in membership from this retirement system to a reciprocal system, or from a reciprocal system to this retirement system, as provided in subsection A. above, occurred after the effective date specified in the agreement for reciprocal benefits between the board of administration of the public employees retirement system and the city council of the City of San José.

C. The provisions of this Part 21 relating to computation of final compensation shall apply to a member if such provisions would have applied had the member's termination and entry into employment occurred after the effective date of the agreement for reciprocal benefits.

(Ords. 24682, 25031.)

### **3.28.2420 Benefits.**

The following provisions shall apply to a member who meets the requirements of Section 3.28.2410:

A. The member shall have the right to elect to leave his or her accumulated contributions on

deposit in the federated city employees retirement fund irrespective of the amount of such contributions or the length of service credited to the member under this retirement system. Such election shall be irrevocable while membership in the reciprocal system continues.

B. For the purpose of the calculation of contribution rates of the city and the members, the age of entry for a person entering this retirement system from a reciprocal system shall be such person's age at entry into the reciprocal system.

C. The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation to a member of this retirement system for the purpose of computing final compensation for such member if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and
2. The member retires concurrently under both this retirement system and the reciprocal system; and
3. At the time of retirement, the member is credited with such period of service under the reciprocal system.

D. Solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances under this retirement system, service shall also include service as an officer or employee of a reciprocal system, if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and
2. The member retires concurrently under both this retirement system and the reciprocal system; and
3. The salary for service in the reciprocal system constitutes compensation of a member of this retirement system for purposes of calculating final compensation.

However, under no circumstances shall such service in a reciprocal system be included in the determination of service credit for qualification for medical benefits provided under Part 16 of this chapter or for qualification for dental benefits provided under Part 17 of this chapter.

E. A member shall be retired for disability and receive a retirement allowance based on the service credited to the member at the time of retirement during any period in which the member receives a disability retirement allowance under a reciprocal system, subject to the following limitations:

1. Such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonservice-connected (nonindustrial) disability if all the member's service had been credited under the reciprocal system; and
2. Such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions plus interest accumulated thereon calculated as of the retirement date, whether or not the disability is for service-connected (industrial) reasons.

F. The survivorship benefits or death benefits for a member who dies from nonservice-connected (nonindustrial) causes as a member of a reciprocal system shall not exceed an amount which when added to the survivorship and death benefits paid for such member under the reciprocal system equals the maximum death benefit payable under that system, subject to the following limitations:

1. Such survivorship and death benefits shall be at least the amount of the member's accumulated contributions plus the interest accrued thereon calculated as of the date of death; and

2. If death is caused by service-connected (industrial) injury or disease in the reciprocal system, the survivorship and death benefits shall be the amount of the member's accumulated contributions plus interest accrued thereon calculated as of the date of death.

(Ord. 24682.)

### **3.28.2430 Special redeposit provisions.**

A. Notwithstanding Section 3.28.790, a former member of this retirement system who terminated city employment, other than for retirement or death, and who withdrew his or her accumulated contributions and the accrued interest may redeposit such withdrawn contributions and accrued interest and become eligible for the benefits under this Part 21 if the following requirements are satisfied:

1. The former member meets the requirements of Section 3.28.2410.
2. The former member redeposits all contributions and accrued interest previously withdrawn plus the interest that would have been earned by such contributions and interest, at the retirement fund's actual earnings rate, had they remained on deposit in the retirement fund.
3. Such redeposit is made within the time and in the manner prescribed by the board, such time not to extend beyond the date of such former member's retirement from this retirement system or from a reciprocal system, whichever first occurs.

B. In the event the former member begins redeposit under this section but before all the amounts specified in paragraph 2. of subsection A. above have been redeposited, the former member dies or retires from this retirement system or a reciprocal system:

1. Such amounts as have been redeposited shall be paid to the former member's designated beneficiary or, if no beneficiary has been designated, to the former member's estate in the event of the former member's death; or

2. Such amounts as have been redeposited shall be paid to the former member in the event of the former member's retirement.

C. This Section 3.28.2430 does not authorize the redeposit of contributions by a member of this retirement system in any case where the member withdrew contributions upon separation from city service, but did not redeposit the contributions upon the member's reemployment. Redeposits of contributions upon reemployment shall be governed by Section 3.28.790.

(Ords. 24682, 25031.)

### **3.28.2440 Information and data.**

On the request of a reciprocal system, the board shall supply information and data necessary for administration of the reciprocal system as it is affected by membership in and service credited under this retirement system.

(Ord. 24682.)

### **3.28.2450 Interpretation of this part.**

Interpretations of the provisions of this Part 21 shall be made with reference to interpretations that have been made relative to the California Public Employees' Retirement System - 1937 Act County

Employees' Retirement reciprocal provisions upon which these provisions are based.

(Ord. 24682.)

### **3.28.2460 Modification of rights.**

All rights under this Part 21 are subject to modification as may be necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in California Government Code Section 20042.

(Ord. 24682.)

### **3.28.2470 Costs to be borne by city.**

A. The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this Part 21 to any members which would not have been provided absent the adoption of this part.

B. The contributions required of the city, if any, shall be determined beginning with the actuarial valuation performed as of July 1, 1997, or, if no valuation is performed as of that date, the first valuation performed thereafter, except that an earlier actuarial valuation date may be used if the retirement board determines that earlier contributions are required to maintain the actuarial soundness of this retirement system.

(Ord. 24682.)

## **Part 22 PURCHASE OF PRIOR SERVICE CREDIT**

### **Sections:**

- 3.28.2500 Prior service credit.
- 3.28.2510 Eligibility requirements.
- 3.28.2520 Contributions for purchase of prior service credit.
- 3.28.2530 Service credit.
- 3.28.2540 Election to purchase prior service credit.

### **3.28.2500 Prior service credit.**

A. Subject to the conditions, limitations and requirements set forth in this Part 22, a member of this system may purchase service credit in this system for eligible prior service.

B. For the purposes of this part, "eligible prior service" means service performed by the member as an employee of the city but for which the member was ineligible for service credit in this system at the time such service was performed and the service was in one of the following categories:

1. Service performed in a part-time position for which the member would have received

service credit had the employment been on a full-time basis; or

2. Service pursuant to the emergency employment act; or
3. Service pursuant to the comprehensive employment and training act; or
4. Service performed on or after January 1, 1986, pursuant to an employment contract with the city.

Eligible prior service does not include service performed as an independent contractor.

C. In the event there is any dispute regarding a member's eligibility to purchase prior service credit, the amount of eligible prior service, the contributions and interest to be paid for the purchase of credit, or the amount of service to be credited to a member, the board shall determine the issue based on the relevant information presented to the board.

(Ord. 25732.)

### **3.28.2510 Eligibility requirements.**

In order to purchase credit for eligible prior service, the member must satisfy all of the following conditions:

- A. The member must file a written election to purchase credit for eligible prior service in accordance with Section 3.28.2540.
- B. The member must pay into the retirement fund contributions for the prior service credit as provided in Section 3.28.2520, plus interest on the unpaid balance of all such contributions from the effective date of the member's election to the date the contributions are fully paid into the retirement fund. The interest rate shall be the actuarial assumed interest rate, as adopted by the board, which is in effect on the effective date of the election.
- C. The member must be a member of this system who is making contributions to the retirement fund and is performing federated city service at all of the following times: on November 24, 1998, at the time of filing the written election and at all times during the contribution period.

(Ord. 25732.)

### **3.28.2520 Contributions for purchase of prior service credit.**

- A. A member may elect to purchase credit for all or a portion of the member's eligible prior service.
- B. For each year of eligible prior service the member elects to purchase, the member shall contribute to the retirement fund:
  1. An amount equal to the total contribution rate (city plus member) in effect as of the date the member files the election to purchase credit, multiplied by the member's compensation earnable as of the date of such election; or
  2. In the case of a member who will retire within one year of the date of the election to purchase eligible prior service, an amount equal to the total contribution rate (city plus member) in effect as of the date the member files the election to purchase credit, multiplied by the member's final compensation calculated as if the member retired as of the date of such election.



C. Notwithstanding subsection B. above, in the case of a member who served as a council assistant from November 2, 1996, through June 25, 1997, and who elects to purchase credit for eligible prior service for that period of time or any portion thereof, the city shall pay the portion of the required contributions that is equivalent to the product of:

1. The city's contribution rate in effect as of the date the member files the election to purchase credit;
2. The number of years of service during the period from November 2, 1996, through June 25, 1997, the member elects to purchase; and
3. The member's compensation, as described in paragraph B. 1. or 2., as applicable.

The member shall contribute the difference between the required contributions calculated in accordance with subsection B. and the amount contributed by the city pursuant to this subsection C.

D. The contribution for any portion of a year of eligible prior service shall be prorated.

E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, any member who elects to purchase credit for eligible prior service may pay the contributions and interest specified in this section:

1. In one lump sum within sixty days from and after the date said member files his or her written election to purchase credit; or
2. In monthly or biweekly installments paid over a period of time not to exceed eight years; or
3. A combination of a lump sum and installments.

(Ord. 25732.)

### **3.28.2530 Service credit.**

A. Except as provided in subsection C. below, if a member elects to purchase credit for eligible prior service and pay the contributions and interest specified in this part and subsequently does pay such contributions and interest, the member shall become entitled to credit under this system for all the eligible prior service for which such contributions and interest are paid.

B. If a member elects to purchase credit for eligible prior service and pay the contributions and interest specified in this part but fails to complete the required payments because of death before retirement, retirement, or other separation from city service, the member shall be credited with the amount of service which is determined by the board to be attributable to the contributions and interest paid as of the date of the member's death, retirement, or other separation from city service.

C. If the calculation of contributions for the purchase of eligible prior service was based on the member's final compensation (as described in Section 3.28.2520B.2.), but the member fails to retire within one year of the date of the election, then the prior service credited to the member shall be reduced to the amount of service credit which the member would have purchased had the calculation been based on the member's compensation earnable as of the date of the election (as described in Section 3.28.2520B.1.).

(Ord. 25732.)

### **3.28.2540 Election to purchase prior service credit.**

A. The secretary of the retirement board shall cause written notice to be personally delivered or mailed to each member who has eligible prior service, informing such member of his or her rights under this part. If mailed, such notice shall be mailed to the member at the latest address as shown in the records of the human resources department of the city.

B. If the member wishes to purchase credit for eligible prior service, the member shall file a written notice of election to do so with the secretary of the retirement board.

C. If the member elects to pay the contributions and interest in installments, or if the member elects to make the lump sum payment by payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions and interest by payroll deductions. The payroll authorization form shall be filed with the director of finance.

D. If a member does not file the notice of election or the payroll authorization form, or elects to pay required contributions in a manner or at a time or times not authorized by this part, that member shall be deemed to have elected not to purchase credit for eligible prior service and shall be deemed to have elected not to have the prior service credited to him or her.

E. The election to purchase credit for eligible prior service through payroll deductions and the authorization to make contributions by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this system.

(Ord. 25732.)

### **Part 23**

#### **PLAN-APPROVED DOMESTIC RELATIONS ORDERS**

##### **Sections:**

- 3.28.2600 Purpose and applicability.
- 3.28.2610 Compliance with plan-approved domestic relations orders.
- 3.28.2620 "Domestic relations order" defined.
- 3.28.2630 "Participant" and "alternate payee" defined.
- 3.28.2640 "Nonmember spouse" and "nonmember domestic partner" defined.
- 3.28.2650 "Plan-approved domestic relations order" defined.
- 3.28.2660 Dissolution or legal separation before the participant has separated from city service.
- 3.28.2670 Dissolution or legal separation after the participant has separated from city service.
- 3.28.2680 Combined account option.
- 3.28.2690 Alternate distribution option for alternate payee.

- 3.28.2700 Separate account option.
- 3.28.2710 Distribution of accumulated contributions in separate account.
- 3.28.2720 Participant's redeposit of contributions refunded to alternate payee.
- 3.28.2730 Monthly allowance for alternate payee.
- 3.28.2740 Monthly allowance for participant.
- 3.28.2750 Designation of beneficiary by alternate payee.
- 3.28.2760 No payments resulting in increased benefits.
- 3.28.2770 Disability retirement of participant.

**3.28.2600 Purpose and applicability.**

A. The purpose of this Part 23 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, a legal separation action, or a termination of a registered domestic partnership with respect to community property rights in benefits provided by this plan.

B. This part shall apply only in those dissolution of marriage, legal separation or termination of domestic partnership proceedings which meet one of the following requirements:

1. The proceedings are instituted on or after October 14, 2005; or
2. The proceedings are pending on October 14, 2005, and the court has not yet awarded the benefits; or
3. The court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits; or
4. The court issues a supplemental order with respect to the division of the community property rights in benefits provided by this plan.

C. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement plan.

(Ords. 27521, 28885.)

**3.28.2610 Compliance with plan-approved domestic relations orders.**

The board of administration shall comply only with domestic relations orders that are plan-approved domestic relations orders pursuant to this part. The board shall not authorize payments to a nonmember spouse or nonmember domestic partner pursuant to any order which does not meet the requirements of a plan-approved domestic relations order.

(Ord. 27521.)

**3.28.2620 "Domestic relations order" defined.**

"Domestic relations order" or "DRO" means any judgment, decree or order (including court approval of a property settlement agreement) which relates to marital property rights in the case of a marital dissolution, termination of a registered domestic partnership, legal separation, and which is made pursuant to a state domestic relations law.

(Ord. 27521.)

**3.28.2630 "Participant" and "alternate payee" defined.**

A. "Participant" means a member of this plan, a retired member of this plan, or a former member of this plan who separated from city service but left his or her accumulated contributions on deposit with the plan.

B. "Alternate payee" means a nonmember spouse or nonmember domestic partner as defined in Section 3.28.2640.

(Ord. 27521.)

**3.28.2640 "Nonmember spouse" and "nonmember domestic partner" defined.**

A. "Nonmember spouse" means the spouse or former spouse of a participant of this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan. A spouse or former spouse who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.

B. "Nonmember domestic partner" means the registered domestic partner or former registered domestic partner of a participant of this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan. "Registered" means the parties established a domestic partnership pursuant to Division 2.5 of the California Family Code or formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2. A nonmember domestic partner who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.

(Ord. 27521.)

**3.28.2650 "Plan-approved domestic relations order" defined.**

A. "Plan-approved domestic relations order" means a domestic relations order which:

1. Sets forth an alternate payee's right to receive a portion of the benefits payable to a participant of this plan;
2. Pursuant to Section 2610 of the California Family Code, orders the division of the community interest in the benefits payable to a participant; and
3. Meets the requirements of this part.

B. A DRO is a plan-approved domestic relations order only if the plan has been joined in the

dissolution of marriage, termination of domestic partnership, or legal separation action pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the California Family Code.

C. A DRO is a plan-approved domestic relations order only if the order clearly specifies that it:

1. Does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; and
2. Does not require the plan to provide benefits (determined on the basis of actuarial value) in excess of those provided by the plan.

D. A DRO is not a plan-approved domestic relations order if it provides for any of the following:

1. Payment from this plan to an alternate payee at any time prior to the date the participant has both separated from city service and begun to receive payments from this plan, except as provided in Section 3.28.2700, Section 3.28.2720, or Section 3.28.2730.
2. Payment from this plan because of the disability of the alternate payee.
3. Payment from this plan of any premium, or portion thereof, for medical or dental insurance coverage for the alternate payee.
4. Designation of the alternate payee as a surviving spouse or surviving domestic partner for the purpose of receiving any surviving spouse benefit, surviving domestic partner benefit, or death benefit provided under this plan on account of the death of the participant.
5. The alternate payee to make any contributions to the plan or the retirement fund or to purchase service credit in the plan.

(Ord. 27521.)

**3.28.2660 Dissolution or legal separation before the participant has separated from city service.**

If marital dissolution, termination of domestic partnership, or legal separation occurs before the participant has separated from city service, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then the DRO will be a plan-approved domestic relations order if, in addition to the requirements of Section 3.28.2650, it meets the requirements of Section 3.28.2680 or Section 3.28.2700.

(Ord. 27521.)

**3.28.2670 Dissolution or legal separation after the participant has separated from city service.**

If the marital dissolution, termination of domestic partnership, or legal separation occurs after the participant has separated from city service, whether for retirement, resignation or any other reason, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then:

A. In order to be a plan-approved domestic relations order the DRO must satisfy the requirements of Section 3.28.2680.

B. The separate account option set forth in Section 3.28.2700 shall not be available, and the DRO

shall not order the establishment of a separate account for the alternate payee.

C. The DRO shall not in any way change any election made by the participant at the time of retirement or other separation from city service.

(Ord. 27521.)

**3.28.2680 Combined account option.**

A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, the board will comply with a DRO which divides the community property interests of a participant and the participant's alternate payee, provided that the DRO meets all of the following requirements:

1. Is a plan-approved domestic relations order under Section 3.28.2650.
2. Includes the date of the marriage or date of establishing the domestic partnership and the date on which the parties separated.
3. Includes the last known mailing address of the alternate payee covered by the order.
4. Specifies the amount or percentage of the participant's monthly benefit, or the participant's accumulated contributions in the event the participant elects a withdrawal of accumulated contributions, which is to be paid to the alternate payee, or specifies the manner in which such amount or percentage is to be determined.
5. Subject to Sections 3.28.2750 and 3.28.2760, specifies the portion of the participant's monthly disability benefits which is to be paid to the alternate payee and the time when such payment to the alternate payee is to commence:
  - a. In the event the participant retires for disability after the date of the dissolution of marriage, termination of domestic partnership, or legal separation, but prior to the time the participant is eligible to retire for service; or
  - b. In the event the participant has already retired for disability as of the date of the dissolution of marriage, termination of domestic partnership, or legal separation.
6. Specifies that the plan shall pay the alternate payee's portion of the benefits to the alternate payee only at such time or times as the plan makes payments to the participant.
7. Specifies that, unless the alternate payee has elected a life annuity option pursuant to Section 3.28.2690, payments by the plan to the alternate payee shall terminate when payments to the participant (or the participant's eligible surviving spouse or the participant's eligible surviving domestic partner) terminate.
8. Specifies that the alternate payee shall not be entitled to payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.
9. Specifies that the alternate payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the plan.
10. Specifies that the plan may offset any payments made by the plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.

B. In addition to the requirements of subsection A., the DRO may address the rights of the alternate payee with respect to the following:

1. In accordance with Section 3.28.2740, the right to designate a beneficiary.
2. The right to elect an alternate distribution option pursuant to Section 3.28.2690.

(Ord. 27521.)

**3.28.2690 Alternate distribution option for alternate payee.**

A. In the event the alternate payee is awarded a combined account, the alternate payee may elect an alternate distribution option as provided in this section by filing a written election with the retirement board on a form provided by the secretary to the board. The election must be filed no earlier than the time the participant files an application for retirement and no later than thirty days after the effective date of the participant's retirement.

B. Any election made pursuant to the provisions of this section may be revoked by the alternate payee provided that the revocation is made in writing and is filed with the retirement board no later than thirty days after the effective date of the participant's retirement. If the election is not revoked within thirty days of the effective date of the participant's retirement, the election shall be irrevocable and benefits shall be paid in accordance with the election and the provisions of this plan.

C. The alternate distribution option consists of an election to have the actuarial equivalent of any allowance payable to the alternate payee from the combined account applied to provide a lesser monthly allowance to the alternate payee until the participant's death and, thereafter, to continue such lesser monthly allowance to the alternate payee for the life of the alternate payee.

D. Any age factor used in the calculation of benefits payable under the alternate distribution option shall be based on the ages of the participant and the alternate payee as of the date benefits first become payable to the participant.

(Ord. 27521.)

**3.28.2700 Separate account option.**

A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, and the participant has not separated from city service at the time of the entry of the DRO, the court may order that the accumulated employee contributions and service credit attributable to periods of the participant's service during the marriage shall be divided into two separate and distinct accounts in the name of the participant and the alternate payee, respectively.

B. Any accumulated contributions or service credit that are not explicitly awarded by the DRO shall be deemed to be the exclusive property of the participant.

C. The board will comply with a DRO which orders the establishment of separate accounts provided that the DRO meets all of the following requirements:

1. Is a plan-approved domestic relations order under Section 3.28.2650.
2. Includes the date of the marriage and the date on which the parties separated.
3. Includes the last known mailing address of the alternate payee covered by the order.

4. Specifies the amount or percentage of the accumulated contributions and service credit to be credited to the alternate payee's separate account or specifies the manner in which such amount or percentage is to be determined.

5. Specifies the rights of the alternate payee with respect to the following:

a. In accordance with Section 3.28.2710, the right to a refund of accumulated employee contributions and interest.

b. In accordance with Section 3.28.2730, the right to receive a monthly allowance.

c. In accordance with Section 3.28.2740, the right to designate a beneficiary.

6. Specifies that, in the capacity of alternate payee, the alternate payee shall not be entitled to any of the following:

a. Payment from the plan because of the disability of the alternate payee.

b. Payment from the plan of any death benefit or survivor's benefit payable because of the death of the participant.

c. Payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.

(Ord. 27521.)

### **3.28.2710 Distribution of accumulated contributions in separate account.**

A. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date of entry of the DRO with the court, the participant is entitled to less than ten years of service credit in this plan, the alternate payee shall receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.

B. If, as of the date of entry of the DRO with the court, the participant is entitled to ten or more years of service credit in this plan, the alternate payee may elect to receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.

1. The alternate payee may make such election at any time after the establishment of the alternate payee's separate account.

2. The alternate payee shall make such election by filing an application for distribution with the secretary to the board on a form provided by the secretary.

C. Any distribution of accumulated contributions made to an alternate payee shall be effective when the plan deposits in the United States mail a warrant drawn in favor of the alternate payee and addressed to the latest address for the alternate payee on file with the plan, or to such other address as is specified in writing by the alternate payee.

D. Once a distribution made pursuant to this section becomes effective:

1. The alternate payee may not cancel the refund or revoke the election for distribution.

2. The alternate payee shall be deemed to have permanently waived all rights in this plan and all rights to the payment of any other benefits pertaining to the service credit or accumulated contributions, or both, in the alternate payee's separate account; and



3. The alternate payee shall have no right to redeposit the distributed accumulated contributions.

(Ord. 27521.)

**3.28.2720 Participant's redeposit of contributions refunded to alternate payee.**

If an alternate payee receives a refund under Section 3.28.2710, the participant may elect to redeposit the accumulated contributions and interest refunded to the alternate payee and to receive credit for the service that had been allocated to the alternate payee.

A. Such election shall be made within five years after notice to the participant from the secretary to the board of the participant's option to redeposit the contributions.

B. The participant shall make such election by filing a written statement of election with the secretary to the board on a form provided by the secretary.

C. Except as provided in paragraph 1. of subsection F. below, the participant shall not be entitled to receive credit for the service that had been allocated to the alternate payee unless, prior to the date the participant retires the participant redeposits:

1. All contributions and interest distributed to the alternate payee; plus

2. All additional interest which would have been earned on the distributed contributions and interest at the actual rate earned by the retirement fund, as of the date the participant elects to redeposit, if the contributions and interest had not been distributed to the alternate payee; plus

3. Interest on the unpaid balance from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund, at the actuarial rate in effect on the date the participant files the election.

D. Such redeposit shall be made within the time and in the manner provided by the board.

E. If the participant does not make the election within the time provided herein, the participant shall be deemed to have elected not to have such service credited to the participant.

F. If the participant elects to redeposit contributions and interest refunded to the alternate payee but does not redeposit all required amounts plus interest within the time and in the manner provided by the board, then:

1. If the failure to complete the redeposit is because of the death of the participant, while a member of this plan but prior to retirement, the participant shall be credited with the amount of service that is determined by the board to be attributable to the amount of payments made as of the date of the participant's death.

2. If the failure to complete the redeposit is for any reason other than the death of the participant prior to retirement, any payments made pursuant to the election shall be credited to the participant's accumulated contributions account but the participant shall receive no service credit that had been allocated to the alternate payee.

(Ord. 27521.)

**3.28.2730 Monthly allowance for alternate payee.**

A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:

1. The alternate payee has not received a refund of accumulated contributions.
2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
  - a. The participant is eligible to retire for service under provisions of this plan; or
  - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or
  - c. In the case of a participant who left city service without retiring, the participant is eligible to receive a monthly allowance under Part 9 of this chapter, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.
3. The alternate payee has attained at least fifty-five years of age.
4. The alternate payee files a written application for monthly benefits with the secretary to the board on a form provided by the secretary.
5. The board approves the payment of such monthly allowance.

B. The monthly allowance to the alternate payee shall begin to accrue on the later of the date designated in the alternate payee's application or the day following the date of the court order dividing the community property of the participant and the alternate payee. In no event shall the monthly allowance begin to accrue earlier than the first day of the month in which the alternate payee's application is received by the secretary to the board.

C. Subject to the provisions of Section 3.28.2750 and 3.28.2760 and subsection D. of this section, the amount of the monthly allowance payable to the alternate payee shall be two and one-half percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.

D. For the purposes of this section:

1. If the alternate payee elects to receive a monthly allowance prior to the date the participant retires, "final compensation" means the final compensation of the participant as of the effective date of the first payment of the alternate payee's allowance.
2. If the participant retired either for service or disability prior to the effective date of the payment of the alternate payee's allowance, "final compensation" means the final compensation used in calculating the participant's retirement allowance.

E. Monthly allowances payable to the alternate payee shall be increased by cost-of-living adjustments in accordance with Chapter 3.44.

(Ord. 27521.)

### **3.28.2740 Monthly allowance for participant.**

A. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and,

as of the date the participant separates from service, the alternate payee has not received a distribution pursuant to Section 3.28.2710, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established; less

2. The monthly allowance payable to the alternate payee pursuant to subsection C. of Section 3.28.2730.

B. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.28.2710 but the participant has received credit pursuant to Section 3.28.2720 for the service that had been allocated to the alternate payee, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be the monthly allowance that would be payable to the participant if no separate account had been established.

C. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.28.2710 and the participant has not made a redeposit pursuant to Section 3.36.3620, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The dollar amount of the monthly allowance that would be payable to the participant if no separate account had been established; less

2. The dollar amount of the monthly allowance that would have been payable to the alternate payee pursuant to subsection C. of Section 3.28.2730 if the alternate payee had not received a distribution.

(Ord. 27521.)

### **3.28.2750 Designation of beneficiary by alternate payee.**

A. The alternate payee who has been awarded a combined account may designate a beneficiary to receive amounts which would be payable to the alternate payee but for the death of the alternate payee.

B. The alternate payee who has been awarded a separate account may designate a beneficiary:

1. To receive the accumulated contributions in the alternate payee's account in the case where the alternate payee dies prior to receipt of payment.

2. To receive any accumulated contributions remaining in the alternate payee's separate account or to receive any unpaid allowance payable at the time of the alternate payee's death.

C. The beneficiary shall be a natural person or persons. The designation may be by class, in which case the members of the class living at the time of the alternate payee's death shall be deemed to be the beneficiaries and shall take in equal shares unless otherwise specified by the alternate payee.

D. A designation of a beneficiary shall be filed with the secretary to the board on a form provided by the secretary.

E. The alternate payee may revoke or change the designation of a beneficiary at any time prior to the alternate payee's death. Any revocation or change of a designation of a beneficiary shall be in

writing on a form provided by the secretary to the board, shall be notarized by a notary public, and shall be filed with the secretary.

F. If the alternate payee does not designate a beneficiary or if all designated beneficiaries predecease the alternate payee:

1. In the case of an alternate payee who has been awarded a combined account, any payments which would have been made to the alternate payee but for the death of the alternate payee shall be paid to the alternate payee's estate.

2. In the case of an alternate payee who has been awarded a separate account, any accumulated contributions remaining in the alternate payee's separate account and any unpaid monthly allowance payable at the time of the alternate payee's death shall be paid to the alternate payee's estate.

G. Nothing in this section shall be deemed to mean that any alternate distribution option elected by an alternate payee shall continue beyond the death of the alternate payee. Payments of any amounts under an alternate distribution option cease upon the death of the alternate payee. Payment of any such amount to the alternate payee's beneficiary or estate is expressly limited to the monthly allowance, or portion thereof, due but unpaid for the month in which the death of the alternate payee occurs.

(Ord. 27521.)

### **3.28.2760 No payments resulting in increased benefits.**

A. Under no circumstances shall the board or this plan be required to make payments in any manner that would result in an increase in the amount of benefits provided under this plan.

B. All benefits payable from this plan shall be determined on the basis of the actuarial assumptions and interest rates that are specifically set forth in this plan, or the economic and demographic actuarial assumptions and interest rates adopted by the board in those instances where the board has such authority under the provisions of this plan.

C. Any age factor used in calculation of benefits to the alternate payee shall be based on the age of the alternate payee at the time benefits commence or, in the case where the alternate payee elects an alternate distribution option pursuant to Section 3.28.2690, as of the date benefits first become payable to the participant.

(Ord. 27521.)

### **3.28.2770 Disability retirement of participant.**

A. If the participant retires for disability, the combined benefit payments to both the participant and the alternate payee shall not exceed the amount that would otherwise have been paid to the participant alone.

B. In the case where the alternate payee has been awarded a separate account, no payment shall be made to the alternate payee until such time as the participant would have been eligible for a service retirement had the participant continued working.

Disability benefits shall be allocated between the participant and the alternate payee as follows:

1. Until the date the participant would have been eligible for a service retirement or the date the

alternate payee applies to receive a monthly allowance, whichever date is later, disability retirement benefits shall be paid to the participant without regard to the service credit awarded to the alternate payee.

2. Once the participant would have been eligible for a service retirement had the participant continued working and the alternate payee applies to receive a monthly allowance from the retirement fund, the amount of the monthly allowance payable to each party shall be determined as though the participant had retired for service.

(Ord. 27521.)

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San Jose, CA Code of Ordinances

**Chapter 3.44**  
**COST-OF-LIVING ADJUSTMENTS**

Sections:

- 3.44.010 Definitions.
- 3.44.020 Initial cost-of-living increase in survivorship allowance payable to survivor of recipient of retirement allowance who dies after April 1, 1970.
- 3.44.030 Cost-of-living increases or decreases - Amount - Exceptions.
- 3.44.040 Determination of percentage of increase or decrease in cost of living.
- 3.44.045 Offset of accumulated increases or decreases.
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- 3.44.070 Limitations and exceptions.
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- 3.44.090 Funding of increases in allowances - Police and fire plans.
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- 3.44.100 Funding of increases in allowances - Federated employee plans.
- 3.44.105 Additional employee contributions.
- 3.44.110 Payroll deductions.
- 3.44.120 Crediting of contributions and interest thereon to individual accounts.
- 3.44.130 Return of contributions and interest.
- 3.44.140 Investment of funds.
- 3.44.150 Chapter 3.36 police and fire plan - Effective February 1, 2002.
- 3.44.160 Federated city employees retirement system - Effective April 1, 2006.

### **3.44.010 Definitions.**

As used in and for purposes of this Chapter 3.44:

A. "Index-year" means each calendar year, respectively, next preceding each "subject year."

B. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "retirement allowance" means and includes any of the biweekly or monthly service-retirement or disability-retirement allowances, or any of the biweekly or monthly installments of any monthly or annual service-retirement or disability-retirement allowances, specified in the following subdivisions:

1. Those specified in Chapter 3.16, Chapter 3.20, Chapter 3.32, Parts 6 and 7 and Sections 3.36.1630 and 3.36.1790 of Chapter 3.36 of the San José Municipal Code, to any of the following persons:

2. Those specified in Section 3.24.510, Part 15 or 16 and Part 17 or 18 of Chapter 3.24 of the San José Municipal Code; and

3. Those specified in Parts 9, 10 and 13 of Chapter 3.28 of the San José Municipal Code; which are or may become payable on or after April 1, 1970, under and pursuant to any of the provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36 of the San José Municipal Code, to any member or former member of any of the city retirement plans established by said Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36, including any increases therein, if any, authorized by the provisions of Chapter 3.40 of this code.

C. "Subject year" means each consecutive twelve- month period, from April 1st of one calendar year to March 31st of the following calendar year, respectively, commencing with the twelve- month period from April 1, 1970, to March 31, 1971, for which retirement allowances and survivorship allowances are to be increased or decreased as hereinafter provided in this Chapter 3.44.

D. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "survivorship allowance" means and includes any of the biweekly or monthly allowances, and any of the biweekly or monthly installments of any monthly or annual allowance, which are or may become payable on or after April 1, 1970, under and pursuant to the provisions of Section 3.24.2040 and Part 19 of Chapter 3.24; Sections 3.28.1480 and 3.28.1490 of Part 11 and Sections 3.28.1500, 3.28.1590, 3.28.1600 of Part 12, or Parts 13 or 14 of Chapter 3.28; and Sections 3.36.1630, 3.36.1790 and Parts 8, 9 and 9.5 of Chapter 3.36 of the San José Municipal Code, to any of the following persons:

1. To any "surviving spouse", "surviving domestic partner" or "surviving child" as such terms are defined in Part 8 of Chapter 3.36; or

2. To any "eligible surviving child" as such term is defined in Part 9 of Chapter 3.36; or

3. To any beneficiary under Part 19 of Chapter 3.24; or

4. To a "surviving wife", "surviving husband" or "surviving child" under Section 3.24.2040 of Chapter 3.24; or

5. To any "surviving spouse", "surviving child" or "surviving children" as such are defined in Part 11 of Chapter 3.28; or

6. To any "surviving spouse", "surviving child" or "surviving children" as defined in Part 12 of Chapter 3.28; or

7. To any "beneficiary" under Part 13 of Chapter 3.28; or

8. To any "eligible surviving child" as defined in Part 14 of Chapter 3.28; including any increases, if any, authorized by the provisions of Chapter 3.40 of the San José Municipal Code.

9. To any "spouse" or "domestic partner" receiving benefits pursuant to an election made under Part 9.5 of Chapter 3.36

(Prior code §§ 2904.500 - 2904.503; Ords. 26417, 26902, 27521, 27712.)

**3.44.020 Initial cost-of-living increase in survivorship allowance payable to survivor of recipient of retirement allowance who dies after April 1, 1970.**

Upon the death, after April 1, 1970, of the recipient of a "retirement allowance," any "survivorship allowance" (including the increase therein, if any, authorized by the provisions of Chapter 3.40 of this Code) which may become payable to a survivor of said deceased person upon his death, shall be increased, as of the date said survivorship allowance first becomes payable, by a percentage equal to the percentage of increase, if any, in the amount of retirement allowance which the deceased had become entitled to, under the provisions of this Chapter 3.44 from April 1, 1970, to the date of his death. Such survivorship allowances as so increased shall thereafter be subject to further increase, or to decrease as hereinafter provided in this Chapter 3.44.

(Prior code § 2904.504.)

**3.44.030 Cost-of-living increases or decreases - Amount - Exceptions.**

Subject to and except as otherwise provided by the provisions of this section or of other sections of this Chapter 3.44, each retirement allowance and each survivorship allowance which is or may become payable, under and pursuant to those provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 and 3.36 of this Code which are hereinabove specified in subsections B. and D. of Section 3.44.010, for any month or two-week period in any subject year subsequent to March 31, 1970, together with such increases, if any, in the amount of any such allowance as have been authorized by the provisions of Chapter 3.40 of this Code, plus such increase, if any, as may have been given pursuant to the provisions of Section 3.44.020 of this chapter, plus or minus such increases or decreases, if any, in the amounts of such allowances as shall have been theretofore made pursuant to the provisions of this Chapter 3.44 in preceding subject years, shall be increased or decreased by a percentage which equals, to the nearest one-tenth of one percent, the percentage by which the cost of living for the month of December of the index-year immediately preceding said subject year shall have increased over or decreased below the cost of living for the month of December of the calendar year immediately preceding such index-year, determined in the manner hereinafter specified in this Chapter 3.44, provided and excepting however, that:

A. No allowances shall be increased or decreased, pursuant to the provisions of this section or any of the following sections of this chapter, for any month or two-week period in a subject year by a percentage in excess of three percent over, or below, the amount of such allowance payable in any month or two-week period of the immediately preceding subject year.

B. No retirement allowance payable to a particular person shall be increased or decreased, pursuant to the provisions of this section or any of the following sections of this chapter, for any month or two-week period in a particular subject year unless the person to whom such allowance is payable retired and became entitled to receive a retirement allowance on or prior to March 31st of the index-year immediately preceding said particular subject year.

C. No survivorship allowance, including any increase therein provided for by Section 3.44.020, payable to a particular person shall be increased or decreased, pursuant to the provisions of this



section or any of the following sections of this chapter, for any month or two-week period in a particular subject year unless the deceased person on account of whose death such survivorship allowance is payable died on or prior to March 31st of the index-year immediately preceding said particular subject year.

D. Notwithstanding subsection B. above, with respect to persons who retire on or after April 1, 1980, the retirement allowance payable to such persons for the period beginning on the first anniversary of the first day of the month immediately following the month in which such retirement occurs and ending at the end of the subject year in which such anniversary occurs shall be increased or decreased, but such increase or decrease for such period shall be on pro rata basis calculated on the percentage (not exceeding three percent) of increase or decrease in the cost of living for the index-year next preceding the subject year in which such period occurs over or below the cost of living for the calendar year immediately preceding such index-year and determined by multiplying such percentage by a fraction, the denominator of which is twelve and the numerator of which is the number of months in such period. Thereafter, such retirement allowances as so increased or decreased shall be increased or decreased in succeeding subject years in accordance with the other provisions of this section and chapter.

E. Notwithstanding subsection C. above, with respect to persons whose survivorship allowance is payable pursuant to Chapter 3.32 or Chapter 3.36 of this Code on account of the death of a person who dies on or after April 1, 1980, the survivorship allowance payable to such persons for the period beginning on the first anniversary of the first day of the month immediately following the month in which such death occurs and ending at the end of the subject year in which such anniversary occurs shall be increased or decreased, but such increase or decrease for such period shall be on a pro rata basis calculated on the percentage (not exceeding three percent) of increase or decrease in the cost of living for the index-year next preceding the subject year in which such period occurs over or below the cost of living for the calendar year immediately preceding such index-year and determined by multiplying such percentage by a fraction, the denominator of which is twelve and the numerator of which is the number of months in such period. Thereafter, such survivorship allowances as so increased or decreased shall be increased or decreased in succeeding subject years in accordance with the other provisions of this section and chapter.

F. Notwithstanding subsection C. above, with respect to persons whose survivorship allowance is payable pursuant to Chapter 3.24 or Chapter 3.28 of this Code on account of the death of a person who dies on or after June 26, 1988, the survivorship allowance payable to such persons shall be increased or decreased as follows:

1. Death of Member Prior to Retirement. In the case of the death of a member of the federated city employees retirement system which occurs before such member's retirement, the increase or decrease in the survivorship allowance shall occur at the time the member's retirement allowance would have increased or decreased in accordance with subsection D. above had the member not died but instead had retired effective on the date of death.

2. Death of Member After Retirement. In the case of the death of a person who had retired from the federated city employees retirement system, the increase or decrease in the survivorship allowance shall occur at the time the decedent's retirement allowance would have increased or decreased pursuant to this section had the decedent not died but instead had continued to receive a retirement allowance.

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(Prior code § 2904.505; Ords. 20479, 20653, 22808.)

### **3.44.040 Determination of percentage of increase or decrease in cost of living.**

Within the three calendar months immediately preceding the commencement of each subject year,

respectively, beginning with the first three months of the calendar year 1970, the retirement board of each of the retirement plans or systems pursuant to which the retirement allowances and survivorship allowances specified in the preceding sections of this chapter are payable, shall determine the percentage of increase or decrease in the cost of living during the index-year next preceding the commencement of the immediately following subject year, over or below the cost of living in the calendar year immediately preceding such index-year. Such shall be done by reference to the most current consumer price index for all urban consumers (CPI-U), San Francisco-Oakland metropolitan area, all items (1967 = 100), as published by the United States Department of Labor's bureau of labor statistics, showing the cost-of-living increase or decrease during the month of December of such index-year over or below the cost of living during the month of December of the calendar year immediately preceding such index-year.

The percentage by which the cost of living for the month of December of such index-year, as shown by said index, shall have increased or decreased over or below the cost of living for the month of December of the calendar year immediately preceding such index-year, as shown by said index, shall be the percentage used, subject to the three percent limitation hereinabove contained in Section 3.44.030 of this chapter, to determine the amount of increases or decreases in retirement allowances and in survivorship allowances which are to be made in the following subject year as above provided for in Section 3.44.030 of this chapter.

If the percentage by which the cost of living for the month of December of any index-year shall have increased or decreased over or below the cost of living for the month of December of the calendar year immediately preceding such index-year is in excess of three percent, the excess shall be accumulated from year to year and included in the determination of the increases or decreases in cost of living in succeeding index-years the same as if they occurred in such succeeding index-years; provided and excepting, however, that:

A. No retirement allowance shall be increased or decreased because of such accumulated increases or decreases in cost of living unless and except to the extent that such accumulated increases or decreases occurred either:

1. During or after the index-year within which the recipient of such allowance retired from city service if he retired from such service within the first three months of a calendar year; or
2. During or after the index-year following the index-year within which the recipient of such allowance retired from city service if he retired from such service within the last nine months of a calendar year, but in no event shall such accumulated increases or decreases include any increases or decreases occurring in any index-year prior to the 1969 index-year.

B. No survivorship allowance shall be increased or decreased because of such accumulated increases or decreases in cost of living unless and except to the extent that such accumulated increases or decreases occurred either:

1. During or after the index-year within which the member or former member of an above-mentioned retirement plan or system, because of whose death the survivorship allowance is payable, either retired from city service or died (whichever occurred earlier) if he died or retired within the first three months of a calendar year; or

2. During or after the index-year following the index-year within which he retired from city service or died (whichever occurred earlier) if he died or retired within the last nine months of a calendar year, but in no event shall such accumulated increases or decreases include any increases or decreases occurring in any index-year prior to the 1969 index-year.

C. No accumulated increases or decreases shall include any increases or decreases which

occurred in any index-year prior to the 1969 index-year.

D. Increases and decreases in the amounts of allowances for each subject year, respectively, shall still be subject to the three percent limitation set forth in Section 3.44.030.

(Prior code § 2904.506; Ord. 20064.)

#### **3.44.045 Offset of accumulated increases or decreases.**

The accumulated percentage increases or decreases in cost of living set forth in Section 3.44.040 shall be offset by the increase in monthly allowance payable pursuant to Chapter 3.42 of this Code as follows:

A. The increase in monthly allowance set forth in Section 3.42.020 or Section 3.42.110 shall be expressed as a percentage increase and the percentage shall be subtracted from the accumulated percentage increases or decreases set forth in Section 3.44.040.

B. The remaining accumulated percentage increases or decreases shall be included in the determination of increases or decreases of retirement allowances and survivorship allowances as provided in Section 3.44.040.

C. If the increase in monthly allowance percentage calculated pursuant to subsection A. above is greater than the accumulated increases or decreases, the accumulated increases or decreases shall be set at zero for the index-year in which the offset occurs.

(Ords. 22279, 24095.)

#### **3.44.050 Cost-of-living increases - Members by reason of certain contract with county.**

All monthly allowances and monthly survivorship allowances payable under Sections 3.36.760, 3.36.1350 and 3.36.1360 shall be eligible for and entitled to the cost of living increases or decreases set forth in this chapter. For purposes of Section 3.44.040, such person shall be deemed to have retired as of the first day of the first period for which he receives a monthly allowance.

(Prior code § 2904.516.)

#### **3.44.060 Determination of time of retirement.**

For purposes of this Chapter 3.44, a member or former member of any retirement plan or system of the city whose employment by the city was terminated by his retiring therefrom pursuant to such plan or system shall be deemed to have retired from service of the city as of the day immediately following the last day of his employment by the city; and a member or former member of any such retirement plan or system whose employment by the city was terminated by resignation, layoff, discharge or other means excepting retirement, but who subsequently becomes eligible under said plan or system to receive a monthly, biweekly or annual allowance pursuant to the provisions of Section 3.24.510, 3.24.590, 3.36.1630 or 3.36.1790 of this Code, shall be deemed to have retired on account of his service to the City of San José as of the first day of the first period for which he receives such allowance pursuant to the above specified sections or provisions, and in such case his said allowance shall be deemed to be a retirement allowance.

(Prior code § 2904.507.)

### **3.44.070 Limitations and exceptions.**

Anything elsewhere in this Chapter 3.44 to the contrary notwithstanding, none of the provisions of this Chapter 3.44 shall be deemed to authorize or provide for:

A. Any increase or decrease in the amount of any retirement allowance or survivorship allowance, or portion thereof, purchased by additional contributions of an employee pursuant to the provisions of Sections 3.20.400, 3.20.410, 3.24.590, 3.24.740, or other similar sections of the San José Municipal Code; or

B. Any increase or decrease in the amount of any allowance or payment paid, payable or made pursuant to the Workers' Compensation Act of the state, or other similar law, ordinance or regulation; or

C. Any increase or decrease in the amount of any retirement allowance or survivorship allowance paid, payable or made pursuant to the provisions of Section 3.24.510, 3.28.580 or 3.28.590 of the San José Municipal Code unless the member or former member because of whose service such an allowance is payable has or had to his credit in the retirement system of which said section is a part, at the time of commencement of retirement, at least five years of such service.

(Prior code § 2904.508; Ords. 21371, 23485.)

### **3.44.080 Limitation on decreases in amounts of allowances.**

Anything elsewhere to the contrary notwithstanding, no retirement allowance and no survivorship allowance shall ever be decreased pursuant to the provisions of this Chapter 3.44 below the amount which the recipient is entitled to under applicable provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36 of this Code, plus such increases, if any, as he may be entitled to under the provisions of Chapter 3.40 of the San José Municipal Code.

(Prior code § 2904.509.)

### **3.44.090 Funding of increases in allowances - Police and fire plans.**

Such increases in retirement allowances and in survivorship allowances as shall become payable under and pursuant to the provisions of this Chapter 3.44 to city retirees who are members or former members of the 1961 police and fire department retirement plan established by Chapter 3.36 of the San José Municipal Code; city retirees who are members or former members of the police and fire department retirement plan established by Chapter 3.32 of this Code; and survivors of members or former members of the above specified police and fire department retirement plans, together with all other payments required to be made to said city retirees and survivors under the provisions of this Chapter 3.44, shall be funded as follows:

A. Special Fund. The special fund heretofore created and now existing in the city treasury as the "police and fire cost-of-living fund" shall continue in existence. All moneys in said fund, and all moneys hereafter transferred, paid into, earned by and credited to said fund shall be used to pay such increases in the above-mentioned allowances as shall become payable under and pursuant to the provisions of this chapter.

#### **B. Members' contributions.**

1. For each calendar month or two-week period from and after the first day of April, 1970, each person who is required by the provisions of either of the two above-mentioned police and fire department retirement plans to make contributions to the above-mentioned police and fire cost-of-living fund. Until changed by the board of administration for police and fire department retirement plan

referred to in Section 3.36.300 of this Code, hereinafter referred to in this Chapter 3.44 as the police and fire retirement board, the cost-of-living contribution required to be made each month or biweekly by each contributor, other than the city, shall be an amount equal to that percentage of the contribution required to be made by such person to either or both of the police and fire department retirement plans or systems established by Chapters 3.32 and 3.36 of this Code, which was in effect on June 30, 1975, under the provisions of this Chapter 3.44 as they read on said date.

2. From time to time and as often as may be reasonably necessary to keep the plan established by this Chapter 3.44 actuarially sound, but not less frequently than once each five years, the above specified police and fire retirement board shall review the percentage rate of monthly or biweekly cost-of-living contribution required of contributors other than the city to determine whether it should be reestablished or changed and, subject to the requirements set forth in this section, shall reestablish such rate or make such change therein as may be reasonably necessary to comply with the provisions of this section. The percentage rate of the cost-of-living contributions so established from time to time by said retirement board for contributors other than the city shall be such as will be sufficient, on the average with moneys, if any, already then in the above-mentioned special fund and with cost-of-living contributions required of the city and with anticipated earnings of said fund:

- a. To make up any deficits then existing in the above-mentioned special fund;
- b. To pay all increases in retirement allowances and in survivorship allowances which, on the basis of actuarial and other relevant information can reasonably be expected to become payable under and pursuant to the provisions of this chapter; and
- c. To make such other payments as may be required by the provisions of this chapter and to provide a reasonable reserve for contingencies.

3. The rate of monthly cost-of-living contribution required of each contributor other than the city shall always be a percentage of the monthly contribution which such contributor is required by the provisions of Chapter 3.32 or 3.36 of this Code to make to either or both of the said police and fire department retirement plans established by said Chapters 3.32 and 3.36; and said percentage rate shall always be the same for all such contributors.

C. City Contributions. For each month, respectively, from and after the first day of April, 1970, the city shall contribute to the above-mentioned police and fire cost-of-living fund the sum of eight dollars for each three dollars contributed to said fund for each such month, respectively, by persons other than the city pursuant to the provisions of the immediately preceding subsection B. of this section.

(Prior code § 2904.510; Ord. 20276.)

#### **3.44.095 Additional employee contributions - Police and fire plans.**

Notwithstanding any other provisions of this Chapter 3.44, the city shall be entitled to an offset of a percentage, as is determined to be appropriate, by the actuary for the police and fire department retirement plan, of the additional employee retirement fund contributions that are made under subsections A. and B. of Section 3.36.1525, against the COLA fund contributions that the city would otherwise be required to make under this Chapter 3.44.

(Ord. 28753.)

#### **3.44.100 Funding of increases in allowances - Federated employee plans.**

Such increases in monthly retirement allowances and in monthly survivorship allowances as shall become payable under and pursuant to the provisions of this Chapter 3.44 to city retirees who are

members or former members of the federated city employees' retirement system, established by Chapters 3.24 and 3.28 of the San José Municipal Code; and survivors of members or former members of said federated city employees' retirement system, together with all other payments required to be made to said city retirees and survivors under the provisions of this Chapter 3.44, shall be funded as follows:

A. *Special fund.* The special fund heretofore created and now existing in the city treasury, known and designated as the "federated employees' cost-of-living fund," shall continue in existence. All moneys in such fund on the effective date of this section, as amended, and all moneys thereafter paid into, earned by and credited to said fund, shall be used to pay such increases in the above-mentioned allowances as shall become payable under and pursuant to the provisions of this Chapter 3.44.

B. *Members' contributions.*

1. Each person who is required by the provisions of the above-mentioned 1975 federated employees' retirement system, established by Chapter 3.28 of this Code, to make contributions to such retirement system shall make cost-of-living contributions to the above-mentioned federated employees' cost-of-living fund. Such cost-of-living contributions shall be made monthly if other contributions required of members by said 1975 federated employees' retirement system are made monthly or biweekly if other contributions required of said members by said retirement system are made biweekly. Until changed by the federated retirement board on the basis of subsequent actuarial valuation, the cost-of-living contributions required to be made in each month or biweekly period by each contributor, other than the city, shall be an amount equal to that percentage of such member's earned monthly (or biweekly if contributions are made biweekly) compensation which was in effect on June 30, 1975, under the provisions of this Chapter 3.44 as they read on said date.

2. From time to time and as often as may be reasonably necessary to keep the plan established by this Chapter 3.44 actuarially sound, but not less frequently than once each five years, the above-specified federated retirement board shall review the percentage rate of the cost-of-living contribution required of contributors, other than the city, to determine whether it should be reestablished or changed and, subject to the requirements set forth in this section, shall reestablish such rate or make such change therein as may be reasonably necessary to comply with the provisions of this section. The percentage rate of the cost-of-living contribution so established from time to time by said retirement board for contributors other than the city shall be such as will be sufficient, with moneys already in the above-mentioned special fund and with cost-of-living contributions required of the city and with anticipated earnings of said fund:

- a. To make up any deficits then existing in the above-mentioned special fund;
- b. To pay all increases in retirement allowances and in survivorship allowances which, on the basis of actuarial and other relevant information, can reasonably be expected to become payable under and pursuant to the provisions of this chapter; and
- c. To make such other payments to said city retirees and survivors as may be required by the provisions of said Chapter 3.44 and to provide a reasonable reserve for contingencies.

3. The rate of monthly or biweekly cost-of-living contribution required of each contributor other than the city shall always be a percentage of each member's earned monthly (or biweekly, if contributions are made biweekly) compensation, and said percentage rate shall always be the same for all such contributors.

C. *City contributions.* For each month (or for each two-week period if biweekly contributions are required of members), respectively, the City of San José shall contribute to the above-mentioned federated city employees' cost-of-living fund the sum of eight dollars per three dollars contributed to

said fund for each such month or two-week period, respectively, by persons other than the city, pursuant to the immediately preceding subsection B. of this section.

(Prior code § 2904.511; Ords. 20276, 20596.)

#### **3.44.105 Additional employee contributions.**

Notwithstanding any other provisions of this Chapter 3.44, the city shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the federated city employees retirement system, of the additional employee retirement contributions that are made under Section 3.28.755 against the COLA fund contributions that the city would otherwise be required to make under this Chapter 3.44.

(Ord. 28752.)

#### **3.44.110 Payroll deductions.**

Any and all cost-of-living contributions required of persons other than the city by the provisions of this Chapter 3.44 shall be paid to and collected by the city's director of finance, and deposited by him in the city treasury to the credit of the special cost-of-living fund entitled thereto. Said director of finance shall, to the fullest extent possible, collect all cost-of-living contributions required of such persons by deducting the amount of such contributions from the monthly or biweekly compensation payable by the city to such persons for services rendered by them to the city.

(Prior code § 2904.512.)

#### **3.44.120 Crediting of contributions and interest thereon to individual accounts.**

Each cost-of-living contribution made by each contributor other than the city pursuant to this Chapter 3.44 shall be credited by the director of finance to an individual account established for such person for such purpose; and accumulated cost-of-living contributions of each such person shall be credited with interest earned thereon at a reasonable rate fixed by the police and fire retirement board with respect to contributions who are members of the above-mentioned police and fire department plans, and fixed by the federated retirement board with respect to members of the federated retirement systems established by Chapter 3.24 and Chapter 3.28 of the San José Municipal Code.

(Prior code § 2904.513.)

#### **3.44.130 Return of contributions and interest.**

A. In each of the following situations, and none other, cost-of-living contributions, and interest thereon, credited to the individual account of a contributor shall be returned as follows:

1. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.32 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to him if and when he becomes entitled to the return of and is paid, under and pursuant to the provisions of Sections 3.32.340, 3.32.350 or 3.32.360 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.32.

2. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.32 of the San José Municipal Code, the cost-of-living contributions, and interest thereon,

credited to such contributor shall be returned to his widow or estate, as the case may be, if and when such widow or estate becomes entitled to the return of and is paid, under and pursuant to the provisions of Sections 3.32.340, 3.32.350 or 3.32.360 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.32.

3. If the contributor is a member of the police and fire department plan established by Chapter 3.36 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to him if and when he becomes entitled to receive and elects to receive and is paid, under and pursuant to the provisions of Sections 3.36.1620 or 3.36.1630 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.36.

4. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.36 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to the survivor or survivors or estate of such contributor if and when such survivor or survivors or estate becomes entitled to receive and is paid, under and pursuant to the provisions of said Chapter 3.36, those accumulated contributions contributed by said contributor to the police and fire department retirement plan established by Chapter 3.36; provided and excepting, however, that said cost-of-living contributions and interest shall not be so returned and paid to said survivor, survivors or estate if any of said survivors or said estate is or becomes or may become entitled to receive any monthly or biweekly allowance under and pursuant to the provisions of said Chapter 3.36.

5. If the contributor is a member of the federated city employees retirement plan established by Chapter 3.24 or Chapter 3.28 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to him shall be returned to him if and when he becomes entitled to receive and does receive, under and pursuant to the provisions of said Chapter 3.24 or Chapter 3.28 the return of all accumulated contributions contributed by him to the federated city employees retirement plan established by said Chapter 3.24 or Chapter 3.28.

6. If the contributor at the time he retired or died was a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of the San José Municipal Code, the cost-of-living contributions and interest thereon which are credited to him shall be paid to such survivor, beneficiary or estate of such contributor as may become entitled to receive, under the provisions of said Chapter 3.24 or Chapter 3.28 plan, all or any of the accumulated contributions contributed by said contributor to such plan, but only if and when such survivor, beneficiary or estate becomes entitled to receive and is paid such contributions under said plan; provided and excepting, however, that if said contributor at the time of his death or retirement was a member of the plan established by Chapter 3.24, such cost-of-living contributions and interest shall not be so returned or paid to said survivor, beneficiary or estate if said survivor, beneficiary or estate is or becomes or may become entitled to receive any allowance under and pursuant to the provisions of said Chapter 3.24; and provided and excepting, further, that, if said contributor at the time of his death or retirement was a member of the plan established by Chapter 3.28, said cost-of-living contributions and interest shall not be so returned or paid to said survivor, beneficiary or estate if any cost-of-living benefit has theretofore been paid or has theretofore become payable under the provisions of this Chapter 3.44.

B. In the event that any contributor, after return to him of his accumulated contributions in any of the retirement plans established by Chapters 3.24, 3.28, 3.32 or 3.36 of this Code, should be required because of reinstatement or otherwise, to return and repay such contributions to any of said plans, he shall, at the same time that he returns such contributions to such plans, return and repay to the city's director of finance, for credit to his account under this Chapter 3.44, all cost-of-living contributions and interest theretofore returned to him under or pursuant to the provisions of this Chapter 3.44.

C. Upon payment, pursuant to the provisions of this Chapter 3.44, of a contributor's accumulated



cost-of-living contributions to such contributor or to any beneficiary, estate or survivor of such contributor, neither said contributor nor any of his survivors shall thereafter have any right to any allowance or other benefit under the provisions of this Chapter 3.44.

(Prior code § 2904.514.)

#### **3.44.140 Investment of funds.**

A. The police and fire retirement board is hereby authorized to invest any or all moneys in the police and fire cost-of-living fund, subject to the same restrictions and limitations as are applicable to its investment of moneys in the retirement fund established by Chapter 3.36 of the San José Municipal Code.

B. The retirement board of the federated city employees retirement plan established by Chapters 3.24 and 3.28 of the San José Municipal Code is hereby authorized to invest any or all moneys in the federated cost-of-living fund, subject to the same restrictions and limitations as are applicable to its investment of moneys in the retirement fund established by Chapter 3.28 of the San José Municipal Code.

C. Earnings or losses from said investments shall be credited or debited to the respective cost-of-living fund from which such investments were made.

(Prior code § 2904.515.)

#### **3.44.150 Chapter 3.36 police and fire plan - Effective February 1, 2002.**

A. Notwithstanding the other provisions of this chapter to the contrary, effective February 1, 2002, the following provisions shall apply to those persons who receive monthly allowances pursuant to the provisions of the police and fire department retirement plan set forth in Chapter 3.32 or Chapter 3.36 of the San José Municipal Code:

1. "Subject year" shall mean the consecutive twelve months from February 1st of one calendar year to January 31 of the following calendar year, respectively, commencing with the twelve-month period from February 1, 2002, to January 31, 2003.

2. Each retirement allowance and each survivorship allowance which is payable under Chapter 3.32 or Chapter 3.36 in any subject year which begins on or after February 1, 2002, together with any increases or decreases in the amount of any such allowance which were previously made pursuant to this Chapter 3.44, shall be increased by three percent per annum in lieu of the increase otherwise provided in this chapter. The first such three percent increase shall be made on February 1, 2002.

3. Each increase shall become effective beginning with the allowance payable for the month of February in each subject year.

4. The accumulation of the excess of cost-of-living percentages as provided in Section 3.44.040 shall not apply.

B. The provisions of this Chapter 3.44 which are not inconsistent with the provisions of subsection A. shall continue to apply with respect to the persons described in subsection A.

(Ord. 26417.)

#### **3.44.160 Federated city employees retirement system - Effective April 1, 2006.**

A. Notwithstanding the other provisions of this chapter to the contrary, effective April 1, 2006, the following provisions shall apply to those persons who receive monthly allowances pursuant to the provisions of the federated city employees retirement system as set forth in Chapter 3.24 or Chapter 3.28 of the San José Municipal Code:

1. Each retirement allowance and each survivorship allowance which is payable under Chapter 3.24 or Chapter 3.28 any subject year which begins on or after April 1, 2006, together with any increases or decreases in the amount of any such allowance which were previously made pursuant to this Chapter 3.44, shall be increased by three percent per annum in lieu of the increase otherwise provided in this chapter. The first such three percent increase shall be made on April 1, 2006.

2. Each increase shall become effective beginning with the allowance payable for the month of April in each subject year.

3. The accumulation of the excess of cost-of-living percentages as provided in Section 3.44.040 shall not apply.

B. In the event the board's actuary determines that there is an increased cost to implement the change to a flat-rate three percent cost-of-living adjustment as provided in this section, such increased cost shall be calculated as a percentage of each member's earned compensation and that percentage rate shall be added to the contributions made by members pursuant to Section 3.44.100. The additional percentage rate imposed pursuant to this paragraph shall be the same for all members.

C. The provisions of this Chapter 3.44 which are not inconsistent with the provisions of Subsections A. and B. shall continue to apply with respect to the persons described in Subsection A.

(Ord. 27652.)

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FULL TEXT OF MEASURE B

**ARTICLE XV-A  
RETIREMENT**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO  
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS  
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:  
*"The Sustainable Retirement Benefits and Compensation Act."*

**Section 1501-A: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits - primarily health benefits - are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

**Section 1502-A: INTENT**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 8, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

**Section 1503-A. Act Supersedes All Conflicting Provisions**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

February 8, 2012

**Section 1504-A. Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

**Section 1505-A. Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

**Section 1506-A. Current Employees**

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

February 8, 2012

amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

**Section 1507-A: One Time Voluntary Election Program ("VEP")**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

February 8, 2012

IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City



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Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

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worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

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- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**Section 1508-A: Future Employees - Limitation on Retirement Benefits - Tier 2**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program - for new employees - shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

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the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

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(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

**Section 1509-A: Disability Retirements**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

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(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

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**Section 1510-A: Emergency Measures to Contain Retiree  
Cost of Living Adjustments**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

**Section 1511-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

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**Section 1512-A: Retiree Healthcare**

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.
- (b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.
- (c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

**Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)**

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually



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through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

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**Section 1514-A: Savings**

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

**Section 1515-A: Severability**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

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(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

RES NO 78158

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,  
OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

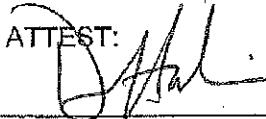
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC  
City Clerk

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE**, and know its contents.

/ / I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

/ / I am / / an Officer / / a partner of \_\_\_\_\_, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

/ / I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

/ / The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matter I believe them to be true.

/XX/ I am one of the attorneys for **Plaintiff/Petitioner SAN JOSE RETIRED EMPLOYEES ASSOCIATION**, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on October 5, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

STEPHEN H. SILVER

*Stephen H. Silver*  
SIGNATURE